

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

July 15, 1999

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, July 15, 1999 at 12:00 noon in the Planning Department Conference Room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present. Bill Johnson, Chair; Chris Carraher; John C. Frye; Frank Garofalo; Bud Hentzen; Richard Lopez; Ronald Marnell (Late arrival); John W. McKay, Jr.; Jerry Michaelis; Osborne-Howes; Warren and Wheeler. George Fulp was not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Joe Lang, Senior Assistant City Attorney; Keith Gooch, Senior Planner; and Karen Wolf, Recording Secretary.

1. Workshop on Northwest Wichita Major Investment Study

Mr. Clyde Prem of Bucher, Willis, Ratliff Corporation presented an executive summary of Northwest Wichita Major Investment Study (MIS).

The Kansas Department of Transportation (KDOT) initiated the Northwest Wichita Major Investment Study (NWW MIS) in 1997, recognizing the recent and potential growth occurring in the northwest portion of Wichita. The outcome of this study is a "Preferred Strategy" that addresses the identified transportation needs and establishes priorities for potential future projects in the study area.

As part of the MIS, the public was involved in a variety of ways:

The Project Steering Committee (PSC) provided input and guidance at key points along the way. Members of the PSC represented residents, organizations and businesses within the study area.

A Technical Committee consisting of transportation planning and engineering officials from the city of Wichita, Sedgwick County, and the Metropolitan Area Planning Department was formed. They met regularly with the representatives from BWR, KDOT, and the FHWA to provide technical review; and

Public forums were held at the "major milestones" during the study to update the public about project activities to date and to obtain input from the public about the study findings.

THIS NWW MIS includes:

An inventory and analysis of existing transportation conditions and projected future conditions in the study area; A statement of transportation needs reflecting the goals and objectives for the major transportation investment as developed by the PSC; the development of criteria and performance measures to evaluate the ability of the alternative strategies to meet the goals and objectives; the identification and analysis of possible strategies; and the evaluation or screening of the possible transportation improvement strategies. The highest-ranking strategy was presented for further consideration. This study includes a recommendation that the strategy be incorporated into the long-range transportation program.

The initial screening process identified eight initial strategies that potentially address all or some of the transportation goals and objectives established for this study. Combinations of the initial strategies were developed to create four refined strategies. These strategies are summarized below:

Strategy 1: Improve Arterials

Includes the upgrade of existing arterials and the incorporation of TSM measures. This reflects a future no-build strategy in terms of including those projects likely to be constructed over the planning period but without a new transportation connector between US-54 and K-96. TDM measures were also an option.

Strategy 2: Inner Connector

Includes a new inner connector highway and the upgrade of select arterials from Strategy 1. TSM, TDM and ITS measures were incorporated into this strategy as appropriate.

Strategy 3: Outer Connector

Includes a new outer connector highway and the upgrade of select arterials from Strategy 1. TSM, TDM and ITS measures were incorporated into this strategy as appropriate.

Strategy 4: Inner/Outer Connector

Includes a new highway that incorporates components of the roadway alignments contained within Strategies 2 and 3. Extending from K-96 to US-54, the highway alignment would be identical to the inner connector as identified in Strategy 2. The variation from Strategy 2 (Inner Connector) is the addition of an east-west freeway segment generally paralleling US-54 from 167th Street West to west of the City of Goddard at which point it would join with US-54. In addition to the freeway component, this strategy also included the upgrade of select arterials, and the incorporation of TSM, TDM, and ITS measures.

An environmental study was also conducted and no fatal flaws were identified in any of the four corridors during this investigation. More detailed analysis of the environmental impacts will be conducted during future phases of the project after alternative road alignments have been established.

As part of the evaluation process, the PSC weighted the relative value of the goals on a scale. The weighting exercise and scoring process were used as a guide in identifying preferred transportation strategies by obtaining feedback from the PSC on the relative importance of the goals.

Applying the goals and associated weightings to the alternative transportation strategies provides differential rankings. Performance measures were identified for each goal/issue. Values were obtained from the travel model and other sources to indicate potential conditions in the year 2030.

Strategies 2 and 4 provided relative mobility benefits through reduces miles of congestion of vehicle hours of travel and lower accident rates. Strategy 1 had a relatively high score in cost-effectiveness. Strategies 2 and 4 were considered to have greater impact on the relative economic development. Strategy 1 had relatively less potential of an environmental impact. When considered in total, Strategies 2 and a4 were rated highest based on the weighted importance of the project goals and objectives.

In addition to the described transportation improvement components, proactive corridor or right-of-way preservation measures were strongly recommended.

Mr. Prem and Mr. Schwinger of BWR stated that the next phase of looking into alternative alignments will begin upon contract approval with KDOT. It may take at least a year to identify potential alignments, but the final alignment may not be known until some time after detailed environmental reviews are conducted.

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2. Subdivision Committee items 2/1, 2/2, 2/3 and 2/4 were approved subject to the Subdivision Committee recommendations. **MCKAY** moved, **LOPEZ** seconded the motion, and it carried unanimously (11-0).

- 2/1. **V-2181** – Everett and Sharon Long request the vacation of a building setback and wall easement, described as:

The 35 foot building setback and five foot wall easement on east side of Lot 18, except the north 35 feet thereof, Block 1, Timber Ridge 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located South of 21st Street North and west of Valleyview.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time June 22, 1999, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described building setback and wall easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

- B. Therefore, the vacation of a portion of a building setback and wall easement described in the petition should be approved, subject to the following condition:

- a. The applicant shall submit an administrative adjustment to remove the building setback and wall easement from the east line of Parcel 4 of the Greystone C.U.P.

SUBDIVISION COMMITTEE S RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following condition:

- A. The applicant shall submit an administrative adjustment to remove the building setback and wall easement from the east line of Parcel 4 of the Greystone C.U.P.

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- 2/2. **V-2182** – Donald and Wilma O'Krakel request the vacation of a portion of a building setback described as:

The west 3 feet of the 25-foot platted building setback except the north 25 feet and the south 15 feet on Lot 73, Block 3, Amarado Estates Addition. Generally located north of 13th Street North and west of Caddy Lane.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time June 22, 1999, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described building setback, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- C. Therefore, the vacation of a portion of a building setback described in the petition should be approved, subject to the following conditions:
- a. The vacation shall only be for the portion of the existing home, which encroaches into the setback.
 - b. The applicant shall comply with all conditions of the administrative adjustment.

SUBDIVISION COMMITTEES RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

- A. The vacation shall only be for the portion of the existing home, which encroaches into the setback.
- B. The applicant shall comply with all conditions of the administrative adjustment.

2/3. V-2183 – Dr. Steven Twietmeyer requests the vacation of a portion of a building setback, described as:

The north 15 feet and the east 15 feet of the building setback as platted on the south and west property lines of Lot 2, Kessler Addition, Wichita, Sedgwick County. Generally located north of 31st Street South and east of West Street.

The applicant is requesting to vacate 15 feet of the 35-foot platted building setback. This would allow expansion of the dental office on-site.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time June 22, 1999, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described building setback, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of a building setback described in the petition should be approved, subject to the following conditions:
 1. The property shall be developed in general conformance with the approved site plan, which is attached.

SUBDIVISION COMMITTEES RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

- A. The property shall be developed in general conformance with the approved site plan, which is attached.

2/4. V-2184 – Maize Road Partnership, c/o Mike Loveland, request the vacation of a portion of a building setback, described as:

The west 80 feet of the 150-foot platted setback except the south 45 feet of Lot 2, Huntington Park Addition to Wichita, Sedgwick County, Kansas. Generally located south of 13th Street North and west of Maize Road.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time June 22, 1999, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described building setback, and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of a building setback described in the petition should be approved, subject to the following conditions:
1. The applicant shall file an administrative adjustment on Parcel 1 of DP-153 to reduce the building setback from 150 feet to 70 feet.

SUBDIVISION COMMITTEES RECOMMENDED ACTION:

The Subdivision Committee recommends approval, subject to the following conditions:

- A. The applicant shall file an administrative adjustment on Parcel 1 of DP-153 to reduce the building setback from 150 feet to 70 feet.

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- 2/5. V-2185** - Marie and Greg Goscha and Michael and Amy Bankston, owners, request the vacation of the 16 foot platted walk easement, described as:

The platted 16-foot walk easement between Lots 10 and 11, Block 1, Rockhurst Addition, located north of 13th Street North and west of Gouverneur.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

The applicants are requesting to vacate the 16-foot platted walk easement, which runs between their two homes. The applicants have stated that there have been problems with individuals walking along this easement and vandalizing their property. This sidewalk is used by children and others to go to and come from Coleman Middle School. A signal is available for people using this sidewalk to cross Gouverneur. If this walk is vacated, individuals attempting to reach the middle school would have to walk along 13th Street North, a four-lane arterial with current traffic counts of 22,088 between Woodlawn and Gouverneur, or cross Gouverneur at 14th Street, an uncontrolled crossing which seems very dangerous.

Staff did request a report from the Wichita Police Department about any problems that have been reported in this area for the past two years. The only report which was filed was a disorderly conduct at 1400 North Gouverneur (Park property), which is east of this easement."

A request by the adjoining property owners to vacate the sidewalk easement was reviewed extensively by CPO 2 and the MAPC, and was ultimately denied by the Wichita City Council in 1997. Materials from the previous case file are attached, as is a report to the City Council last month which summarizes the previous case and provides an update on activity in the area since the City Council denied the vacation.

RECOMMENDATION: A requirement of all vacations by State Statute is that no private rights will be injured or endangered by the vacation and the public will suffer no loss or inconvenience thereby. This request will potentially injure, endanger and inconvenience children and others, particularly those who reside in Block 1 of the Rockhurst Addition, but also others, who do not wish to walk along 13th Street North, a street with high traffic counts, and who wish to cross Gouverneur at a signalized intersection and not be crossing on a busy street. No evidence has been submitted to change the facts that were reviewed in 1997 and which led to the City Council's denial at that time. In fact, the evidence seems to be that the collective efforts of the neighbors, the City, and Coleman administrators has led to a successful elimination of threats and vandalism. The Police Chief and the Traffic Engineer joined the Planning staff in recommending against the vacation previously. The Comprehensive Plan calls for interconnection of subdivisions with streets and/or walkways. The City Council stated in denying this request in 1997 that the "gating" of subdivisions was counter to positive community building. As the co-author of "Fortress America" stated: "The ubiquitous gated communities of the suburbs are coming to look like a fortified honeycomb, with each residential neighborhood encased in its own space with little or no regard for the community as a whole. As we enter a new century, the choice should not be between secession from the public realm or leading a life of poverty and fear.... How can this nation fulfill its democratic destiny by building neighborhoods that create economic, racial, and social barriers?" Therefore, Planning Staff recommends that the request be DENIED.

FRYE "When this came before the Commission in 1997, did the Commission recommend that it be closed?"

GOOCH "The Planning Commission recommended it be closed, yes."

FRYE "The other thing is, you were talking about sidewalks on 13th Street and that it is dangerous to walk on, correct? The children that live south of 13th Street that live over in the addition near about Edgemoor and 13th, now before we talked about them being bused part of the time but that they voluntarily could walk to school. Is that the same? "

GOOCH "I don't know."

KROUT "I don't know if those children are bused."

FRYE "Wasn't that one of the concerns then?"

KROUT "I think you will have to find out from the applicants whether it was or wasn't."

FRYE "Is it not true they have put in sidewalks though all the way from Edgemoor clear to Woodlawn on the north side or south side?"

KROUT "There are new sidewalks on the south side, yes."

GOOCH "Those are all on the south side."

FRYE "And then on Woodlawn to Gouverneur there are sidewalks on the north side, correct?"

JOHNSON "Are there any other questions of staff? Applicant or agent."

MARIE GOSCHA "I live at 7026 Timberon Lane, just north of the sidewalk. Most of you I think are quite familiar with our previous request to vacate this easement that runs through our property and the Bankstons to the south. We provided you much detailed documentation at our last visit, and I will not spend time going over information that you have already received. What I would like for you to know is that we continuing experience problems directly related to the sidewalk. When this matter was last brought before the City Council, it was stated to us that if the problems continued related to the sidewalk that we could bring our concerns back to the City. That is why we are here today. It is easy to believe that there are no problems with the sidewalk when you live away from it and do not have to experience the nuisances that occur because of it on a on- going basis. The instances have been minimized by those who do not experience them and I would like to share trash that frequently finds its way down the sidewalk.

When I say trash I am not talking about the occasional Taco Tico cup or candy bar wrapper that the opposing view has thrown back at us. I would like to show you what we get frequently in our yards that are within reach my three and five year olds. This is what I found on the sidewalk. I honestly do not believe that my five-year old knows how to write that. We have spent numerous hours on documentation in the past, and to keep this short, I would like you to know that regular urinating on the fence and bushes continues and climbing on the fences and vulgarities and profanity shouted out at us as we are outside in our yards. Two additional motorcycles have passed through the sidewalks since our last visit. Again as my children are playing nearby. There is frequent nighttime loitering on the sidewalk by individuals who park directly behind our fences, and when we go out to see what is going on, they run away to their cars and drive off. We have had on-going contact with the City, with the Police Department, and the School, for the past three years. I don't know what all is involved in filing a police report, but I am here to say that I have called 911 several times myself and I know that my neighbor has too. I do not know if that does not get documented because they do not find the person. All I can say is that I have called 911 and notified the appropriate officials on several occasions.

The argument has been presented from the opposing view that is one for safety for children getting to and from Coleman School in Eastview Park. I might just point out that there is no signalized crossing at Gouverneur at the easement. There is a sign there but there is no signalized crossing, those have been moved to Thirteenth Street. I believe there is three along that area. I would also like to say that I do not believe that the sidewalk on 13th Street is unsafe. According to the police report that we have received there has been no children hit on a sidewalk in the City ever. I would like to know also how often that the 22,000 cars a day that pass down 13th Street are present at one time during the day.

As for the time and convenience and getting to the park and the school created by closing the sidewalk, walking it myself it would require about 2 ½ to 3 additional minutes to reach the park and school using 13th Street. In closing, we come to you in good faith. Asking you to consider our concerns with an open mind, free of prejudice, trusting that we are doing that we are doing what we feel is best for the safety and well-being of our families and our neighbors who are experiencing the unfortunate but real situations occurring on our property. We ask you to honor our request to vacate this easement. Finally I would like to challenge everybody in this room regardless of their opinion on this matter to show courtesy and respect to each other as we discuss this. Maybe we can even set an example for the children that are present here today. Thank you."

JOHNSON "Are there any questions of the applicant?"

FRYE "I raise the question at one time in 1997 they talked about the children that live in what used to be called Williamsburg Apartments, now I think they have changed the name. Those children, one concern for them was because at that time they said that they bused those children if they wished to be bused, but if they didn't they could walk. It was their choice. Is that the way that things happen there?"

GOSCHA "I do not know. When that was brought up the opposing side had a meeting with the school and worked some of those arrangements out. If I remember directly I think that that was just a trial basis, but I would like to point out, that the majority of the

problems that we are having are not related to school children. Some of those things are happening and that has diminished and the school and the Police Department have worked wonderfully with us on that. The things that we are concerned about more are motorcycles, and the types of things that I am passing around. If these actions occurred once in a while it would be no big deal. But it happens a lot and this is my home."

FRYE "Thank you."

GAROFALO "You have mentioned the 911 calls. You mentioned working with the Police. What does the Community Police Officer said? Have you had conversation and meetings with them? What efforts or help have they been?"

GOSCHA "Yes. We had a meeting with the Parks Department and the Police Department and we have done this with the Police Department frequently. They have put thorny bushes in as recommended by, I think, the Police Chief. Last time we were here we thought maybe that would deteriorate some of it. I think maybe it has helped some with the fence climbing, but the bushes are short and it will be a little while before they will help with that. The neighborhood police have on several occasions came and parked during after school hours, it is funny, when they are out there a lot of people choose not to use the sidewalk, they go an alternate route. They have done a great job in helping with some of the school problems."

MICHAELIS "Did I understand you to say that there is no signal at that particular crossing?"

GOSCHA "That is correct."

MICHAELIS "Is there one down at 13th and Gouverneur?"

GOSCHA "Yes, I think there are two."

FRYE "No, there isn't at 13th and Gouverneur."

GOSCHA "It is a little bit north of there I think."

MICHAELIS "Okay. There is a sidewalk on the north side of 13th running along 13th from Lawrence to Gouverneur?"

GOSCHA "Yes."

HENTZEN "Is your home shown on that map?"

GOSCHA "Lot number 10."

JOHNSON "Any other questions of the applicant? Thank you. The applicant still has 5 minutes and 15 seconds. Are there any other homeowners that would like to speak?"

GOSCHA "That is all."

JOHNSON "Is there anyone else here to speak in favor of this item? Anyone here to speak in opposition? May we have a show of hands? Please come forward. Because we only show four hands showing, so let's hold our questions to them, so that we do not end up getting into a talking match and be our own worse enemy on this."

BECKY WADE "Until two weeks ago I lived at 7000 Stonegate, I now reside at 625 N. Rutland. Even though I have moved from the neighborhood I still have very strong feelings about keeping the sidewalk open. I lived there with this issue for the last eight years, and that is why I bring my comments to you today. Two years ago the argument for closing the sidewalk was that things were getting worse and worse in the neighborhood. My argument today is that things are getting better and better. The police report that and incidences reported to them have virtually ceased. Coleman Middle School has only had one report made to them in the last two years and more important to me, unless I have been asleep for the last two years, we have not had any neighborhood watch meetings at all. Bringing any of these issues to the people in the neighborhood that there was any problems going on.

There has been no information provided to us that there was ongoing problems that needed to be addressed. Now if the problem is still so bad, why have the neighbors living in the neighborhood not informed us? We were just totally blind sighted with this issue even coming back up again, and quite frankly we are in shock. So if we do not sound very prepared today it is because we are just stunned that we are even here having this conversation again. So, now when we all thought that things were wonderful in the neighborhood after two years of working very hard to make things better, we hear again how dismal and awful and crime ridden our neighborhood is. We did not even know that it was bad. If it is so awful, why are there so many long-term residences living there? If it is so awful, why have so many new families chosen to move into the neighborhood? If it is so awful, why are so many garage doors left open all day right by the sidewalk? I tell you why my doors were left open. I felt safe in this neighborhood. Estimates are that at least nine to ten people a day use the walk. That is almost 300 per month. That sounds like a lot, but 10 a day is not very many. If even one nuisance a week occurs that still only 1%. Why should the other 296 behaving people be denied the right to walk on a city sidewalk to a school and to a city park? That is way out of proportion.

I have always felt that the part of the problems was that some of the people using the walk are from other neighborhoods, as referred to twice today. Some of those people on the block do not think that these people do not think that they belong in our neighborhood. I know for a fact, that in 1997 when the incident list was typed up of problems in the neighborhood, it was listed on May 13, 1997, and I quote, 'Brought basketball and stopped to play on a driveway.' Well, the last time a checked a basketball was

not a lethal weapon. Yet Coleman was notified that kids are playing basketball. The kids were invited to my house to play basketball with my son. The problem is the kids were black. They got reported for being in our neighborhood. I think that is wrong, they were not doing anything, they were not breaking in any windows, they were not peeing on anybody's fence and they were playing basketball at my house by invitation.

In my opinion none of the white kids have ever been reported for playing basketball at my house. That is racial. Another item that was reported on the list that on April 14, 1997, a school bus let out a person in front of the house and then that person walked towards Coleman. Coleman was called and notified, was this a crime? Is this vandalism? The bus driver may have been lost, things like that should not be counted as incidence against the sidewalk. There were some other items on the list that are inappropriate I agree, but when silly things like a lost bus driver and a racially motivated item like at my house are used against the sidewalk, I have a problem with that.

Several times myself and others have tried to get information from the applicant's about what has been happening for the last two years, when we heard this was coming back up again. All that we got was vague comments and no specific factual information. So I was glad to see that there was a bag passed around. I have to wonder how bad the problem is and we can't get more information then that. The protective covenants for the Rockhurst Addition prohibit any fencing on the easement. Vacating the easement would violate that covenant.

The State of Kansas, as you already have been told, requires that before a vacation can be granted, no private rights would be injured or endangered by the vacation, and the public will suffer no loss or inconvenience. That means walking five more minutes around the block. There will be private rights injured, there will be people inconvenienced and there will be public loss if this vacation is approved. That would be a violation of the State of Kansas Statute. The sidewalk works, it is getting neighborhood kids to Coleman quickly and safely. It is getting people to the park. CPO voted unanimously to keep the walk open, Planning Staff recommends that it stay open. It is a nice safe area, closing the walk is negative and permanent. As stated in the Eagle Editorial this morning the, City of Wichita did not get to be an All American City because it closes off sidewalks. Thank you."

JOHNSON "Are there any questions?"

CHRIS WALLACE "I live at 6908 STONEGATE "I am here as a mother. I have lived there for 17 years. When we bought that house, we continued to be big supporters of public education. One of the reasons that we bought that house is because of the proximity to Harris Elementary and to Coleman Middle School. I have two daughters, both of which are here today, one in an 11 year-old and one a 14 year old. My 14 year-old just finished three wonderful years at Coleman Middle School. She used that walkway, that sidewalk, everyday, either to or from or sometime both to school. Even at times coming home after volleyball practice when it was dark. She never once had anybody harass, intimidate, talk ugly to her, or any of the other things that these people say happened. I frankly do not believe it. Sometimes she walked with black children and that was great and that was fine with me. If you vote to recommend closing it off, her only choice in the future would be to go on 13th Street, where, yes, there are 22,000 cars a day and there are sidewalks. But that is not why we bought that house, so that she could go around 13th Street. Or she goes to 14th Street, where there are no sidewalks, and she walks in the street.

She is moving on and she will be in high school. But, her little sister now will start 6th grade there. It is not an acceptable alternative for me as a parent to have her any either of those two situations. In closing, I would just ask that you think of the safety of my child, and all the other children and the other people, adults that use this, everyday, for thirty years when it was built. I would also like to pass out, in case you did not have a chance to see, a copy of today's Wichita Eagle Editorial, which is a strong recommendation that this City, which takes pride in our City, does not close off sidewalks. I also have a copy of the latest issue of the Community Voice. Last year in November 1997, the City Council voted 6-1 that we keep our street and our sidewalks open."

JOHNSON "Thank you. Are there any questions?"

GAROFALO "Would you point out on the map where you live?"

THOMAS FUNK "I live at 6907 Timberon. I have lived at the residence for approximately 15 years. In that time I have used that sidewalk probably one thousand of times, to walk in the park which, primarily is what I use it for. When this all originally came up, I was concerned when the applicants came to me and asked if I would support them on this issue and they began to tell me some of things that had happened. I was concerned at that time, because I was not aware of anything happening. I was more than happy to sit and listen.

Although I was not necessarily in favor of closing the sidewalk, I decided to become neutral on the item, in the interest of just attempting to just get along with people, and it wasn't that big a thing, I did not think, to me. But as this thing went on and as time has gone on and the tension in the neighborhood that has resulted from this, it is a real sad occurrence to me. It is no reflection on the applicants in any way, shape, or form. I decided that I needed to stand up for what I really believed, and that is, there is no way that the sidewalk should be closed. It is an amenity to the community; it has always been an amenity. It helped me to decide to purchase that home 15 years ago. I never have regretted it. I have never experienced any of the problems that have been discussed, although I am a ways from there, so I would not be in that area.

Recently, on a Saturday morning, I walked down Lawrence Lane, and in the grass along the sidewalk I discovered a almost nearly full bottle of Jack Daniel's and a bottle of coke, a two liter bottle, and a bag of ice and some cups. Now, had a child been along, and discovered that before I did, I don't know, maybe they would have taken a shot of the Jack Daniel's, all I am saying is that things happen. I am guessing that somebody dumped it as they got near a Police car or something. The point of the issue is that one of the children in the neighborhood could have easily found that. I am not here to apply to close Lawrence Lane. The point of issue is that I think when you move into a community and you move next to a sidewalk, near a school, I think you have to be aware that

there are going to be some problems. I have some friends that live near a school in another part of the city, and they experience problems fairly regularly of the same type. I am just here to say that this is beyond me. I am done. Thank you."

JOHNSON "Are there any questions? Is there anybody else here to speak in opposition?"

SALLY SMITH GOOCH "I live at 7013 Stonegate, which is Block 12 next to 11, on the corner. I have lived in the Rockhurst Addition for only about 8 months. My history of the neighborhood expands approximately 25 years. I grew up in nearby Spring Acres and attended school at Price Elementary and Coleman Junior High. I knew many kids from the Rockhurst Addition and in fact spent the night regularly in the house that I now own when I was in grade school. The sidewalk in question has been in existence as long as I can remember. I walked it regularly when I attended Coleman. Never did I see anything that was out of the ordinary. My brother-in-law and sister-in-law lived in Rockhurst for 8 years and just recently moved. Their son, my nephew, safely walked that sidewalk for three years.

My husband and I specifically bought in this neighborhood for these reasons. I have two children, a 5 year-old daughter and a 20-month old son. The nearby park and the school district and the fact that the Rockhurst Addition was considered by the Police as a crime free neighborhood were the reasons we purchased our house. The sidewalk was a major selling point for us. I remembered walking it when I attended Coleman, and I wanted to have safe access for my children.

On Monday evening my husband addressed the CPO and specifically asked for facts that support the closing of the sidewalk. To this date we have received none. I am not referring to the nuisance items documented in the first round in 1997. I ask you, who hasn't experienced at least one of these types of occurrences before? Especially if they choose to live next to a school, park or sidewalk? Dogs were teased, someone jumped on the fence, someone moved a sprinkler, and yes even someone urinated on the fence. All of these are irritating and non-desirable, but not critically to the point of closing the sidewalk. I submit to you that all of these occurrences could occur if the sidewalk was not there. The applicants still have a back fence line that backs up to Gouverneur Street, as do I. It backs up to Coleman and the park. What will stop someone from jumping the fence, teasing the dog, and yes even urinating from Gouverneur? What is next, closing Gouverneur? If you choose to close the sidewalk, you will be denying my children and many more in the neighborhood; safe and direct access to the park and later to Coleman. I have taught in middle school for the past 10 years. It has been my experience that administrators work hard with patrons to solve nuisance items. I know the Coleman Administrators and it has been recognized by the applicant's that they have worked hard to solve this problem. I also know middle school kids. They usually react to how they are treated. I have personally witnessed certain neighbors lining the sidewalk and staring down certain children who are walking across the sidewalk. I find this behavior intimidating, and I would guess that the students or the kids would also. These particular kids kept walking, said nothing, and continued through and on out of Rockhurst. In fact in the eight months that my husband and I have lived there, we have seen absolutely nothing or heard of absolutely nothing recent to justify the closure of this sidewalk.

The fact that there is no additional documentation since this matter was decisively voted in 1997, carries no weight for me. In closing, my husband and I, strongly oppose the closing of the sidewalk. We want safe access for our children in the future. The good of the few does not out weight the good of the many. If the sidewalk is closed then it is forever. What of the future people in the neighborhood? What of my children who will go to Coleman someday? What of the neighborhood kids that will be attending Coleman next year? If this sidewalk closes what is next? College Hill? Harrison Park? Boston Park? Or possibly higher fences, barbed wire? Thank you."

JOHNSON "Anyone else to speak in opposition?"

ALLEY WALLACE "I live at 6908 Stonegate. I will be a sixth grader next year and I will go to Coleman. I will have to go through the crosswalk. It is the easiest and the safest way to get to Coleman. I think safety should be the number one issue. The two other options to walk are 14th Street or 13th Street. 14th Street has no sidewalks; I would have to walk in the street. There are sidewalks on 13th Street but that is an extremely busy street. It is obvious that the crosswalk is the safest way. I hope that for the next three years I will be able to have the easy access to Coleman or any other place around there. The crosswalk has been there for 30 years and I think that it should stay."

JOHNSON "Are there any questions? Is there anyone else to speak in opposition?"

MORGAN WALLACE "I live at 6908 Stonegate. I am going to be a freshman at Southeast High School and for the past three years I have attended Coleman Middle School. Almost everyday to get to and from school I walked on the crosswalk. Not once did I ever experience any problems. Never anything but kindness from the kids that walked across there with me. Even at times when it was getting dark after volleyball practice and I walked home. It is the safest way also. To walk through 14th Street or 13th Street is not safe, because 14th has no sidewalks, and 13th is very busy with traffic. I do not have any idea why anyone would want to close a crosswalk that is used for so many kids' safety. Is our street really so private that we can't have harmless kids walking down it? Of course not."

OSBORNE-HOWES "You used that sidewalk last year? Do you know about how many kids also from Rockhurst use that sidewalk?"

MORGAN WALLACE "I know that Drew Wade did. That is about all I can think of and Scott Cullens used to. Three of us."

JOHNSON "Is there anyone else to speak in opposition?"

DREW WADE "I live at 625 Rutland. Until two weeks ago I lived at 7000 Stonegate. I am against closing the sidewalk. I used the sidewalk for more than three years walking to and from school and also walking to the park. I used the sidewalk at least twice a day

and never had any problems. I never saw any graffiti written on sidewalks or fences. Or kids yelling at neighbors. It was a quick and convenient way for my friend and I to get to places without walking to 13th Street. Believe me, during the winter I wanted to get to school quick, in the cold weather, without taking a five-minute detour along 13th Street. I hope that my cousins that now live on the block will get to have the same opportunity that I had to use the sidewalk. Thank you."

JOHNSON "Are there questions? Is there anyone else to speak in opposition? Seeing none, the applicant has two minutes for rebuttal. The applicant declines?"

GOSCHA "There is nothing else to add."

JOHNSON "I will bring it back to the Commission. What is the pleasure of the Commission?"

MICHAELIS "Did I understand that there was about ten students, or ten children a day that use this? I think the answer that Susan got was that there was three from Rockhurst, is that right? "

MORGAN WALLACE "There are other children that live in other areas of Rockhurst that walk through it to. "

MARNELL "I have question for staff on this. This is a utility easement as well, are there any utilities in that easement currently?"

GOOCH "I would have to check that out."

KROUT "I believe that there are, and the intention is not to vacate the utility easement, that this would remain and would be available for utilities, whether for existing or future utilities. It is just to vacate the portion of the easement that deals with the sidewalk easement and the no-fencing requirement."

MARNELL "My second question is, this would have to do with the planning stages, if this came up as a subdivision, with a subdivision committee, would this be put in presently in the way that the plats are done today?"

GOOCH "I couldn't give you a 100% guarantee but I think planning staff would at least attempt to do something sort of like this to insure safety. All the time that we put in streets that connect other subdivisions, and therefore I think that we would also try to connect with sidewalks, which we generally do."

MARNELL "I have seen several subdivision plats over the years but this is unique."

KROUT "I think that this is not the usual, and I think it is something that the staff would encourage. But as new plats come in, it is not something that the subdivision regulations require, and so we can only encourage it but we can't require it of people who are doing new subdivisions. We have also encouraged that if two cul-de-sacs have lots back to back that we provide those side yard easements, if the streets don't connect, that they at least connect with a walking path, pedestrian paths. But, I would agree with you that you don't see this very often, although this is kind of feature that is encouraged in the sub-division regulations and in the Comprehensive Plan. "

FRYE "I am familiar with only one other which is over in my area which is connecting between two properties. Price School connecting to the back schoolyard onto a cul-de-sac. If there are any others in the City that adjoin a park or a school, I am not aware of it."

KROUT "Frankly, the Planning Commission, is technically, on a regular basis, and maybe it is our fault for not pointing it out to you, where we have cases of blocks that face and connect onto collector or arterial streets. There is a recommendation that has been not adhered to about having some mid-block connections. "

OSBORNE-HOWES "I remember hearing this case a couple of years ago, didn't we hear it twice?"

JOHNSON "It was deferred."

OSBORNE-HOWES "I believe I voted against the last time and I do not see any reason to change my vote. If anything, I thought that some of the comments that the neighbors made reaffirmed my view. It sounds like this is a young neighborhood. I was asking a question, how many students would use it and we have got some young families moving in there knowing that their kids would use it sometime. I think I agree that it is an amenity and just a part of living next to a public sidewalk where you are going to have occasional altercations. I see no reason to close it off. "

MOTION: That the Planning Commission recommend to the governing body that this request be denied.

OSBORNE-HOWES moved, **PLATT** seconded the motion.

KROUT "I just want to point out, because the question was raised about the private covenants that apply to this subdivision and whether or not that means that private rights would be injured if the City were to vacate it. That the covenants would go against it. I have talked to the Law office, but not Joe Lang, who is here this afternoon, and maybe he could elaborate. I did talk to Doug Mossier from the Law Department, and he suggested, and I guess I agree, that if the City were to take an action to vacate the sidewalk--allow the closing of the sidewalk--there are still covenants that if they are enforceable, they are still enforceable. The City's action does not prevent the owners in this addition from continuing to take action. I think that we should say to you, taking the action of vacating the sidewalk and allowing it to be closed, does not prevent the homeowners from taking private action and so it

does not injure those private rights that are established by the covenant. I do not think that is necessarily a reason for you to approve the vacation, I think there is a public policy issue here. But I do not think you should rely on the fact that it is injuring private rights. I think it has more to do with the loss it could be to the public if you were to deny it."

JOHNSON "Are there any questions?"

FRYE "You did not mention this at all before."

KROUT "About the covenants?"

FRYE "I did not hear any of this before. He did not point this out to us before."

KROUT "This issue of the covenants was not raised two years ago, so we did not look at it so closely. "

MCKAY "I am having a real problem with this. When we first heard this in 1997, we said go back neighbors and work it out, and it does not work, and now it two or three year later and evidently it still has not worked. I see the thing that has popped up since then, we were listening to the facts and now we are talking about nation's rights, and democratic destiny and creating economic racial and social barriers. This one thing is going to cause Wichita not to get anything, anymore. I can't support this motion. This Planning Commission voted 11-2 to close it, and the political pressure was put on our City Council, and they did not have guts enough to follow through with what we said. Now we are hearing it again. I cannot vote for the motion. I think this is ridiculous the way that this has been presented to us by the staff."

GAROFALO "Marvin, is it completely out of the realm of the possibility, if this sidewalk was closed, that a sidewalk couldn't be put up by 14th Street? It is not very far up to 14th Street. It wouldn't be between a couple of houses. Is that something that couldn't be done?"

KROUT "Is Randy Hoskins here? Will you please help me answer this question? The normal responsibility for constructing sidewalks and maintaining sidewalks is with homeowners. But we do have a fund for missing links, and in this case, does the Council have an option of at-large funds to build a sidewalk? Or because that would be a local street, 14th Street would they have to order in the sidewalk and then access it against the property owners on 14th Street?"

RANDY HOSKINS, City Traffic Engineer "Typically, the funds that we have for sidewalks within the city are only for filling in arterial streets where the sidewalk is missing. The way that it is typically handled is that any sidewalk along residential streets is assessed and paid for by the residents. However, City Council would have the chance to waive that policy."

KROUT "Can't they order in the sidewalk that is missing and access it? Even if the owners don't want it to be accessed. "

HOSKINS "I would imagine they have that power."

GAROFALO "I would imagine that if this is so important to people, that they may be willing to pay for it if they had to. That is just a comment. To me it would seem to solve two problems. If the sidewalk was put up at 14th Street, it would solve these peoples' problems, the homeowners, and it wouldn't be in anybody's backyard so to speak. 14th Street would be accessible to everybody."

WHEELER "The last time we discussed this, the crosswalk location on Gouverneur to the school is not aligned with this walkway. We sent it back to the neighborhood to try and solve. At least in my mind what we were trying to do was to line up pedestrian traffic with crosswalks to the school. If I recall the crosswalk aligns with 14th Street, is that correct?"

GOOCH "Showing slides describing area."

KROUT "Maybe someone from the neighborhood could help us out?"

OSBORNE-HOWES "It does align with the sidewalk easement."

KROUT "Was there a signal at that location at one time?"

MICHAEL BANKSTON "I live at 7017 Stonegate. There was a signal at one time and we did the research to find out, that was before our time here in the neighborhood. It was taken out because so many of the students that would be traveling to Coleman did not live in this neighborhood. Maybe thirty years, and there were many more students that lived in the neighborhood, and they felt like it was appropriate to have that signalizing the crossing there. That was taken out and moved in favor of another location actually on 13th Street. There are two signalized locations that are on either side of where Governor would end. One to the west and one to the east. Now Gouverneur and 13th has a crosswalk, but it is not a signalized crosswalk. It is a crossing that you can cross there. It might be also important to point out that on 13th Street, they had just finished the construction on repairing all the sidewalk along 13th Street, just adjacent to our neighborhood. So the sidewalk is almost brand new now, is perfectly smooth, it is not next to 13th Street like you see some sidewalks that are just like right there."

LOPEZ "Marvin, you stated that there are utilities running down the easement."

KROUT "I think there is some utility but I do not remember which."

LOPEZ "If there is utilities would they still be maintained? Will the City allow the fencing to block it off? "

KROUT "Yes. We normally do."

VOTE ON THE MOTION: The motion failed with 6 votes in favor (Lopez, Osborne-Howes, Warren, Garofalo, Platt and Carraher) and 7 in opposition (McKay, Johnson, Michaelis, Marnell, Frye, Hentzen and Wheeler).

MOTION: That the request be approved.

MCKAY moved **MICHAELIS** second the motion.

KROUT "Do you want to talk about private rights and public convenience in your motion, John?"

MCKAY "No, all I want to talk about is the fact that I feel we have some neighborhoods out here that have tried to work together for the past three years and it does not always seem to be working. Of the people that were opposed some of them do not even live in the neighborhood any more. I do not know if you are taking one's rights away from the other and give it to the other. "

KROUT "I would think that you are probably making the finding that there is not a substantial loss of inconvenience, because of the existing sidewalk on 13th Street."

MCKAY "Not for two families out of all of these around here. I have heard nothing to substantiate the fact, other than the two families that live in the area that use it. If people would be coming that go to Coleman school, and been here in rows and that we don't want to use it every day. But I think we have a neighborhood situation here. We voted 11-2 before to close it. I think the pressure was put on City Council, and the motion was made to deny it and it failed, and so I am making a motion to approve the vacation. I don't think anybody's rights are being hurt."

GAROFALO "I would still like to see the possibility of seeing putting a sidewalk up at 14th Street if this was closed."

MCKAY "I don't think you can make that part of the motion and you could make that as a recommendation if this thing passes then do it. "

KROUT "I think that it is already in the record and I will point it out when this case goes to City Council next Tuesday. After this motion, if you wanted to make a motion and see if there is a consensus within the Planning Commission about that, then we might want to do that."

WARREN "I think the legal issue is going to be interesting. I certainly can't predict what it is. We all know that those of us that have been in the real estate business. But once we granted somebody the right to use a certain egress, ingress it is pretty hard to take it away from them. Particularly if it is on public land. It is pretty difficult to take it away from them on private land."

MCKAY "I don't think that is our responsibility."

WHEELER "The neighborhoods south of 13th and those children go to Coleman and they access from 13th Street like Hartmoor and those neighborhoods."

MCKAY "I think this is a situation that one or two people that did use it or would use it want to leave it opened and some people that live next door to it because of what has happened want it closed."

WHEELER "If we vacate as a public sidewalk when we refer to the covenants. That could become a private matter?"

KROUT "Yes. I think there is some possibility that it is not our job to try to and interpret that private covenants are enforceable. The covenants could be enforced and the sidewalk forced to stay open. But they seem to be in effect. They say that unless there is a 60% vote to modify them or terminate them that it would not be a violation of those covenants to close the sidewalk. It is something the private owners would need to enforce."

WHEELER "Are you suggesting that this sidewalk is mentioned in that "covenants?"

KROUT "Yes. It specifically states that Lots 10 and 11 will leave that ingress and egress, and not fence across that area."

MCKAY "That is why you let the neighborhood make that decision."

WHEELER "Then it becomes an issue of the neighborhood of whether it is a private access."

PLATT "It seems to me that what we have got here is an argument between what I would call a planning decision and on the other hand a political decision. When the area was subdivided, the issue was raised that we need access to the park for this area that is being developed. We need access to the school; probably the right solution would have been to not allow that to be cul-de-sac but to put a street through there. Cul-de-sacs are popular and so somebody says all right, we will get around that by providing sidewalk access. Which in one sense makes a lot of sense, I suppose, but it produces a problem. It seems to me that the planning solution to this still says that there should be access to the school and the park. Now if for some reason people are not behaving and we get into a whole bunch of difficulties over personal issues, that is a political problem. The City Council being an elected body is the group that ought to be able to deal with the political problem. I have no problem at all if the City Council says close it, that is their

job. Our job from a planning standpoint is to say there ought to be access through there, and certainly, in terms of the number of people speaking today, I have not seen any reason to suggest otherwise. "

FRYE "I voted against the previous motion because when it came up before, I voted to close this sidewalk. I am still going to vote to close this sidewalk. If you are looking at it from a planning standpoint, when that was put through there and that addition was there that was thirty years ago. Things change, situations change, we do not do things the same way we did thirty years ago. We did not have sidewalks along 13th Street. I know when I lived on 13th we had a ditch. Things change. I think they do have access to that school and that park. It may be a little bit different but they do have access. I do not believe that it is a safety factor at all. Quite frankly, when I see four people in the Editorial page to recommend something that usually is a sign for me to vote the other way."

VOTE ON THE MOTION: The motion carried with 7 votes in favor (Johnson, Wheeler, Marnell, McKay, Michaelis, Frye and Hentzen), and 6 in opposition (Platt, Carraher, Garofalo, Warren, Osborne-Howes and Lopez).

MOTION: That the Planning Commission recommend to the City Council to look at the alternative of replacing this sidewalk with a sidewalk at 14th Street.

GAROFALO moved, **FRYE** seconded the motion.

MCKAY "Could that have been a part of the motion? I started to make that a part of the original motion."

LANG "You have the right to place conditions on your actions, but, a sidewalk is an action that requires a whole different set of procedures. I think a recommendation is probably the best way to go."

KROUT "Let's talk about this Joe. I think that it would be possible it can be closed have a motion that a condition of the vacation would be that only if the sidewalk is replaced on 14th Street."

MCKAY "Does that mean that Garofalo motion would be a recommendation."

KROUT "Right now that is what it is, unless you are willing to amend your motion."

OSBORNE-HOWES "My comment is that if we think that they obviously still need a sidewalk, then what that says is we shouldn't have voted to oppose this in the first place. That is my opinion."

MCKAY "I think if the politicians would not have gotten involved in this it would have been taken care of two years ago."

VOTE ON THE MOTION: The motion carried with 11 votes in favor and 2 in opposition (Osborne-Howes and Platt).

KROUT "For the audience who is here on this case, this will be on the City Council Agenda under Unfinished Business which, puts it at the beginning of the Council Agenda. As you heard earlier this afternoon, the Councils policy is not to open up this item or any item on which that they had the advertised public hearing. You may want to be there in case the Council has any specific questions of either the applicants or of the neighborhood. You should not expect that they are going to open it up like this for public hearing."

JOHNSON "We will be pulling items 2/6, 2/9 and 2/12 for comments."

Subdivision items 2/7, 2/8, 2/10 and 2/11 were approved, subject to the Subdivision Committee recommendations (**MCKAY** moved **WHEELER** seconded the motion, and it carried unanimously (13-0).

Items taken out of order:

2/7. S/D 99-32 – Final Plat of BLUESTEM ACRES ADDITION (Formerly Kaydee's Summit Addition), located on the northeast corner of 279th Street West and 61st Street North.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Health Department shall comment on the feasibility of building sites for lots 6, 7 and 8 which are encumbered by floodway reserves. Health Department has approved the site for sewage lagoons. The applicant shall place a note on the face of the plat regarding lagoon placement.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. The northwestern portion of the site is encumbered by the 100-year floodplain and platted as a floodway reserve. County Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. Minimum building elevations need to be revised.

- D. County Engineering should comment on the proposed access controls and the need for complete access control from the intersection. County Engineering has requested 100-ft of complete access control from the intersection for each street. Access control except one opening per lot is required along the south line of the plat.
- The requested access controls have been denoted.
- E. A temporary turnaround will need to be established by separate instrument.
- F. County Fire should comment on the length of the private street (2,600 ft) which exceeds the 1,600 ft limitation specified in the Subdivision regulations. The platting of the street as a stub for future connection to the north is acceptable.
- G. The applicant needs to guarantee the installation of the street, and dedicate it as a public right-of-way.
- H. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- I. County Fire shall comment on the acceptability of the street name. The street name is acceptable.
- J. A covenant shall be filed setting forth ownership and maintenance of the private drive reserve along with future reversionary rights of the reserve to the lots benefiting from the reserve.
- K. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell has requested an additional 10-ft utility easement to be located within the building setback.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
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- 2/8. S/D 99-43** – One-step final plat of CASA DE AGUA ADDITION, located on the northwest corner of Meridian and 61st Street North.
- A. City water is available to serve this site, which will be utilized to serve Valley Center. City Engineering needs to comment on the need for easements or guarantees. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Traffic Engineering needs to comment on the access controls. The plat proposes one access opening along 61st St. North and complete access control along Meridian; consistent with the site plan submitted with the Conditional Use. Traffic Engineering has requested that the opening be located within the west 30 feet of the plat.

- E. On the final plat tracing, a note shall be placed on the face of the plat indicating that this Addition is subject to conditions of Conditional Use, CU-503.
- F. The final plat tracing should be signed by the party holding a mortgage on the site as indicated by the plat binder.
- G. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- H. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/10. S/D 99-44 – One-Step Final Plat of BUU QUANG TEMPLE ADDITION, located on the west side of Hydraulic Avenue, south of 47th Street South.

- A. Existing municipal services appear to be available to this site. City Engineering needs to comment on the need for any guarantees or easements. No guarantees are required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- D. Traffic Engineering needs to comment on the access controls. The plat denotes an existing access opening along the south 30 feet of the lot's frontage to Hydraulic. The access controls are acceptable.
- E. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.

- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- H. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- K. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- L. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- P. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/11. S/D 98-17 – One-Step Final Plat of WESTRIDGE ADDITION, located on the east side of 119th Street West, South of 29th Street North.

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed, to allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water. City Engineering needs to comment on the need for other guarantees or easements.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. City Engineering has approved the drainage plan. A guarantee is required. County Engineering requests a copy of the drainage plan.
- E. The plat proposes two points of access from 119th St. West.
- G. Traffic Engineering shall comment on the need for additional right-of-way for 119th St. West. No additional right-of-way is required.
- H. Traffic Engineering shall comment on the need for improvements to 119th St. West. The Applicant shall provide a guarantee for left turn lanes at both accesses onto 119th Street.
- I. The applicant shall guarantee the paving of the interior streets. The paving guarantee shall also provide for sidewalks on one side of the continuous through streets – Ryan, Parkridge and Central Park.
- J. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association

taking over those responsibilities.

- K. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. City Fire shall comment on the acceptability of the street names. City Fire has requested that the loop street extending off of Ryan shall be renamed "Ryan Place".
- M. If the pipeline easement indicated in the platting binder is encumbering the plat, it shall be shown and the plat will be subject to the standard pipeline conditions. Otherwise, verification must be provided that the easement is off-site or has been released.
- N. The final plat tracing shall reference a tie point to a section corner.
- O. The applicant shall submit a covenant which provides for four (4) off-street parking spaces per dwelling unit on each lot which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell and KGE have requested additional easements.
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

Item taken out of order:

- 2/6. **S/D 97-14** – Revised Final Plat of REGENCY PARK ADDITION, located on the south side of 29th Street North and on the west side of Greenwich.
- A. The applicant shall guarantee the extension of City water and sanitary sewer.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. An off-site drainage agreement and cross-lot drainage agreement are required. A drainage guarantee is also required.

- D. The plat shall delete the word "complete" in the access control area adjoining Lot 1, Block 1.
- E. The proposed 25-ft building setbacks do not conform with those imposed by the Protective Overlay (50-foot front yard setback). An administrative adjustment would be required.
- F. The Protective Overlay required the platting of a public access easement connecting the K-96 Expressway bike trail to the soccer fields located west of this plat. The connection will be located within the right-of-way and an administrative adjustment will be required to eliminate this condition.
- G. A cross-lot circulation agreement is required for internal access in accordance with the protective overlay.
- H. Fire Department shall comment on the acceptability of the street names.
- I. Lot 1 shall be limited to one access opening to Greenwich in the south 60 feet of this lot.
- J. The applicant shall guarantee the paving of the interior streets.
- K. Lot 1, Block 1 exceeds the lot depth to width ratio and a modification will need to be granted.
- L. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- M. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- N. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- O. A Notice of Protective Overlay Certificate shall be provided, identifying the approved Protective overlay and its special conditions for development on this property.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- X. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. KGE has requested additional easements.
- Y. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

- Z. The Applicant shall include the soccer fields as part of this plat and include the City of Wichita as a signatory to the plat.

DALE MILLER, Planning staff "This is basically a debate over access control. It is my understanding that the applicant has a lot here. It is fairly large. This would be 29th Street, if it were there. Twenty-ninth Street has been vacated sometime in the past, so there is a 'T' intersection here with Greenwich, 29th Street comes in from the east and 'Ts', so if 29th were here, it would go on. There is about 70 feet of space between the north property line and this line to what would be the south pavement of 29th Street as proposed for those of you on the Subdivision Committee. You may remember that Regency Park Addition is a warehouse industrial project, but that this balance here that is not shown is going to be a recreational center for soccer and baseball fields, if that helps you get oriented.

What is proposed by staff is that there be no access along this particular lot to Greenwich other than a temporary access point until such time as 29th Street is put in, and at that time there would be a permanent access north to 29th Street. The argument is that we try and minimize the number of access points to arterial streets. With this eventually going in to serve the soccer field, that they could provide a connection here and not have a connection there. As you can see, there are lots that are backing up to this and then this is the proposed street here. Another solution would have been for there to be an access point to come up from the south and connect here. Greg Allison is here for the applicant, and Randy Hoskins is here from Traffic Engineering if you have any more questions. But I think that is the basic issue at hand."

JOHNSON "Are there any other questions? Applicant or agent."

GREG ALLISON "I am with Mid-Kansas Engineering, representing the applicant. I have a couple of handouts that I want to pass out. What I want to do with the handout is to be able to represent to you what is going on in a drawing where hopefully it is understandable what we are wanting to do.

As Dale said, this road leads to the soccer field that was donated to the City by the applicant some time back, and also to the proposed northeast baseball facilities, which are yet to be constructed. Then on west of there is Jabara Airport, so it will be essentially a dead-end road, and really it is a drive to access these facilities, primarily. What I have is on the bigger one. This shows the layout of the lot adjacent to the road, and that road, as you can see, is right off Greenwich. It is about 70 feet from our north property line. Our north property line is separated by some open space along there.

What we propose to do is to have a permanent point of access along the south property line that is approximately 60 feet wide, provided you guys vote in favor of that. What I would like to do with the second hand-out; this is a study that has been done on the northeast Wichita Sewer Service area, and the shaded area represents the extent of what the City is able to serve with sewer at this point without having to do some major improvements, other than the extension of lines. In other words, just north of this road is the top of the hill where sewer can be served, so as far as we know, no other public improvements are intended to be out further some time in the future. The other thing is, along 29th, east of here it is my understanding that that is classified as a collector road right now, and up to the year 2020. I know they are doing a new study now, so I don't know if that is going to change any classifications there.

What I hope to do with this information is to represent to you how far away we are from the intersection. We feel that there is adequate distance there to get people in and out of not only our lot here, but also the soccer field and any activity along 29th Street. The other thing is just to kind of represent to you how this is maybe the 'end of the world' so to speak, as far as City improvements that can be extended without some major undertaking by the City. We don't foresee a lot of development going on, hence, how that relates to traffic improvements, and how this access point will affect anything else going on. I know in the Subdivision regs, the new ones that were just passed, they have a regulation about being 250 feet from a major arterial road, and you can have right-in, right-out only. What I want to do is represent, on the bigger drawing, that we are over the 250 for that kind of rule and we feel a full access is really something that has been approved before in other places with a lot more congestion and traffic than this one, and we would like to be able to have that same consideration here.

The owner of the parcel is here, too and would be happy to answer any questions you might have as well."

KROUT "I have two questions. Did you say 29th Street is going to be developed as a private road and not a public street?"

ALLISON "Do you mean going west of Greenwich? Well, at this time, I have talked with Vicky (Huang) and she will get back with me as to whether they want that as a public road or a private road, but essentially, it serves the soccer field and the baseball field, and as part of some agreements, it will serve this lot. So we do intend to have access off of that, but we also would like to have access off of Greenwich, as well."

KROUT "Maybe that relates to the other question. I don't know if the Subdivision Committee talked about it, but this does require a waiver of regulations that say that lots should not be more than 3 times longer than they are wide. It is a very long and narrow lot, and it is kind of unusual. Are there plans for this particular property?"

ALLISON "I think there is. The land is under contract, as far as I now, right now, and I think Mr. Ramseyer with Ritchie Associates can answer some of those questions. Rob?"

ROB RAMSEYER "I am with Ritchie Associates. We are the managing partner of Regency Park, LLC, who owns this ground at this time. We feel strongly that we need another access into this lot. Twenty-ninth Street, as far as I know, at this time, will be a public road, that is the way it is petitioned; serving that lot, the soccer fields and the baseball field. We feel that at certain times when the

soccer field is in use and the baseball field is in use, it would be inappropriate to have the users of that lot jam up with any soccer or baseball traffic. We feel that that unfairly burdens that lot and is a real inconvenience and detriment to that lot. There are other openings along there. We don't feel that we have asked for too many openings along there. We are a ways from 29th Street which would be a dead-end street going back to the west.

As you all know, we donated the ground for the soccer fields to the City and Partners put the infrastructure in at a substantial cost. It is our hope that those things will kick off and be used quite a bit, which is a good news/bad news thing for that lot. As Greg said, without reiterating, we are a ways away from the 29th Street Intersection there, being basically a 'T' back into the soccer fields. In general, we have been pretty agreeable to staff recommendations. While we have argued a little bit, we have been agreeable to, on other plats on accesses, etc., probably more so than any of our neighbors in the other areas of other plats, so we sure would appreciate your consideration on this."

KROUT "Did you say how you thought the lot was going to develop?"

RAMSEYER "We have somebody, if he is not under contract he will be shortly, and so I really don't want to say. It could be a user that would be a reasonably large building, requiring that kind of space, but not a whole bunch of people involved."

KROUT "Have you considered an easement from 28th Street between the lots off of 28th Street as an alternative?"

RAMSEYER "Yeah, we have looked at a number more. We have spent more money on land planning on this thing than I hate to admit, and with the people we have kicking tires and seriously negotiating contracts right now, I don't think that would work."

WARREN "It is my understanding that your main concern and your advocacy at this point is to get an opening onto Greenwich into what I think is Lot 1?"

RAMSEYER "Right. Lot 1 is right here and all we are asking is for one more opening."

KROUT "Limited to the southern 60 feet. Isn't that right?"

RAMSEYER "Yeah, that is what Greg has proposed."

WARREN "Isn't that what we approved in Subdivision?"

KROUT "Apparently not."

MCKAY "No, what we approved was, when we were discussing this, there were two things brought up. One, the cross from the south with an easement, like Marvin was talking about, and we were discussing the temporary and then Greg said no, that 29th Street was going to go in, blah, blah, blah, so we thought that 29th was going to be there and we would utilize 29th rather than the one over here because the Traffic Engineer and staff recommended not to put one there."

WARREN "I see. I see no problem with what they are asking for."

MCKAY "Well, I am just saying that the motion was made to that effect."

WARREN "What is on the north side of 29th Street?"

RAMSEYER "The north side of 29th, adjacent to the soccer fields would be the property the city has purchased for baseball, and then there is another private user, an original family trust still owns some undeveloped ground there."

WARREN "Twenty-ninth is going to die right there as it goes west?"

RAMSEYER "Yes, sir."

JOHNSON "Are there any other questions?"

PLATT "First of all, you mentioned kicking tires...are you talking about a used car lot here?" (Laughter)

RAMSEYER "No, sir."

PLATT "Sorry, I couldn't resist that. Who owns this part called 'open space' on this?"

RAMSEYER "That would be this lot right here (indicating)."

PLATT "Okay. You are calling it open space. It is between the lot and 29th Street."

ALLISON "That open space is part of what will be the road right-of-way or reserve, which probably would be dedicated to the soccer field. That is more than likely what it would be, road or soccer field-type maintenance."

MCKAY "Greg, does that mean you guys are going to build this 300+ medial that you have designed here? Is it going to be that long?"

ALLISON "Yes. We proposed that because of the stacking that goes on with the disbursement of the soccer field. We worked that out with the owners and with the City Engineering."

JOHNSON "Are there any other questions of the applicant? Thank you. Is there anyone else to speak in favor of this? Is there anyone here to speak in opposition to this request? Seeing none, I will bring it back to the Commission. The Traffic Engineer is here if anybody has questions of him."

MOTION: That the Planning Commission recommend to the governing body that the request be approved subject to Subdivision Committee recommendations, with the exception that an opening off of Greenwich onto Lot 1 in the southerly 60 foot be allowed.

WARREN moved, **FRYE** seconded the motion.

JOHNSON "Is there any discussion?"

KROUT "I guess I would just say that the Traffic Engineer is suggesting to you that that 250 feet is a minimum standard. On the other hand, I do have to say that the idea of having only an access point to that lot via a street that is going to be primarily a street for kids and sports, we would normally want to separate out the industrial traffic from the residential traffic, so if you were going to make an exception from good access management, I think this would probably be a good place to do it. Somehow, I think with all of that private planning, there is a better solution there to that lot with its configuration, but I guess I think that if you are going to make an exception, I can see the reason why in terms of not wanting to mix the traffic and rely on that street that is primarily for playing fields."

VOTE ON THE MOTION: The motion carried unanimously (13-0).

- 2/9. S/D 99-42** – One-Step Final Plat of HOLLAND VENTURES ADDITION, located north of Kellogg, on the west side of Tyler.
- A. Existing municipal services appear to be available to serve this site. City Engineering needs to verify if other guarantees are required. No other guarantees are required.
 - B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
 - C. City Engineering needs to comment on the status of the applicant's drainage plan. A revised drainage plan is required.
 - D. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
 - E. The legal description shall be revised to accurately portray the land being platted.
 - F. The plat is located within the immediate proximity of the proposed new interchange of US 54 Highway and Tyler Road. Traffic Engineering should comment on any improvements needed to Tyler. No improvements are required.
 - G. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
 - H. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
 - I. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
 - J. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
 - K. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
 - L. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.

- M. Perimeter closure computations shall be submitted with the final plat tracing.
- N. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- O. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

JOHNSON "Commissioner Garofalo had a question on this item."

GAROFALO "I have a couple of questions. One, I was wondering, and I have no idea who voted in the negative on this in the Subdivision, but I am curious. I just wondered why?"

Also, I have jotted down here...what about access now and later? I will have to refresh my own memory on what I meant by that."

MCKAY "Frank, I believe the reason George voted against that was because the Traffic Engineer wanted to line up the approaches across the street from each other. We said we didn't think that was necessary because they are under construction over there, too, and this is already in existence and he would have to move it. I think that was why George voted against it, right, George?"

PLATT "Yes."

MCKAY "I can't answer your other question."

WARREN "But we are talking about an existing drive, aren't we?"

MCKAY "Yes."

JOHNSON "What was your other question?"

GAROFALO "The other question was about access, but now I can't recall what I wanted to know."

KROUT "Is this an existing drive for a developed property?"

MILLER "We were doing the orientation and Neil was in here."

GAROFALO "I will let the other question go because I don't want to waste any time."

JOHNSON "Is there anyone else here to speak on item 2/9? Seeing none, what is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

WHEELER moved, **HENTZEN** seconded the motion, and it carried unanimously (13-0).

2/12. S/D 99-45 – One step final plat of NEWMAN UNIVERSITY ADDITION, located on the southwest corner of Sheridan and McCormick.

- A. City Engineering needs to comment on the need for guarantees or easements. City Engineering requests the platting of a utility easement along lots 3, 4 and 5 to cover the existing sanitary sewer. A guarantee is required for the extension of sanitary sewer.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. A cross-lot drainage agreement is required.
- E. Traffic Engineering needs to comment on the access controls. The plat proposes two access openings along McCormick Avenue. Traffic Engineering has limited the site to no more than one access opening along McCormick.
- E. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- F. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be

indicated on the face of the plat.

- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property. Southwestern Bell has requested additional utility easements.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

JOHNSON "Susan will be abstaining on this item. Are there any questions on it?"

GAROFALO "I do have one. What is the status on the vacations?"

KROUT "I know that at least two of those have been vacated. Keith, can you answer that?"

GOOCH "To the best of my knowledge, they are mostly being vacated through this plat."

MCKAY "Right."

GOOCH "That is how we are going to vacate them instead of going through the separate replatting of this area. Through the plat you are allowed to vacate streets."

GAROFALO "Those are like on the campus?"

GOOCH "Yes."

MCKAY "Frank, there is a street between the main campus and where the athletic field is, and they are just cleaning it all up is basically what they are doing."

GAROFALO "Okay."

MOTION: That the Planning Commission recommend to the governing body that the request be approved.

MCKAY moved, **HENTZEN** seconded the motion, and it carried with 12 votes in favor. There was no opposition. Osborne-Howes abstained.

ZONING:

- 3a. Case No. DP-138 Amendment #2** – Amendment to Parcel 5 of the Meridian Outlet Mall CUP to allow a communication tower as a permitted use, and;
- 3b. Case No. Z-3324** – Zone change from “LC” Limited Commercial to “GC” General Commercial on property described as:
- The South 85 feet of the West 85 feet of Lot 4, Block 1, YMCA South Addition, Wichita, Sedgwick County, Kansas.
- Lots 1-3 inclusive, Block 1, YMCA South Addition, Wichita, Sedgwick County, Kansas. Generally located north of I-235, approximately one-half mile west of Meridian.

KROUT “Donna, we are expecting a request for a 2 week deferral on this case, so you can just be very brief with the presentation.”

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant proposes to amend Parcel 5 of the Meridian Outlet Mall CUP (DP-138) to allow, as a permitted use, a 150 foot communication tower and to rezone 7,225 square feet from “LC” Limited Commercial to “GC” General Commercial. The application area is located north of I-235, approximately one-half mile west of Meridian, in the extreme southwestern corner of a larger tract, the Meridian Outlet Mall. The Meridian Outlet Mall is bordered by Meridian Avenue on the east, by a drainage channel extending from the end of Sheridan to I-235 on the west, by 33rd Street South on the north, and by I-235 on the south. The application area is adjacent to Parcel 4 which is currently being developed as the Wichita YMCA New South Branch.

The applicant has submitted a site plan, which shows two 12 by 20-foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 150-foot “monopole type” tower would be located in the northeastern portion of the site. A six-foot tall chain link fence with three strands of barbed wire is shown surrounding the tower and pad sites to enclose the area between the buildings and prevent unauthorized access to the site. A gate at the southeastern corner of the fenced area would allow authorized entrance to the site via open space to the YMCA parking lot approximately 1000 feet to the east. All development is located in the northeastern quadrant of the site in order to comply with the 35 foot setback required on the southern and western property lines by the CUP.

The site is Parcel 5 of the CUP, created by administrative adjustment May 9, 1999, from Parcel 4 of the CUP. This adjustment reduced the size of Parcel 4 from 57.90 acres to 57.73 acres and created Parcel 5 with 7,225 square feet and a maximum height of 35 feet, maximum coverage of 35 percent, and maximum gross floor area of 35 percent. Uses were limited to outdoor and indoor recreational uses, the same as previously allowed for Parcel 4. In order to allow the development of the communication tower, the applicant is now seeking an amendment to the CUP to allow “commercial communication tower” as a permitted use and a zoning change from “LC” to “GC” as required for communication towers. In addition, the applicant is seeking a variance to the compatibility setback requirements of 345 feet to 50 feet from the Board of Zoning Appeals on June 22 (BZA 17-99) to allow the tower to be 150 feet in height.

The Unified Zoning Code permits communication towers in the “GC” General Commercial and more intensive districts by right. However, the Zoning Code requires the applicant to provide the following information, in order to ensure that no more new towers are constructed than are absolutely necessary:

- (1) there is no available space on existing or approved towers or other structures, which can be utilized to meet the applicant's communication needs;
- (2) existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) the owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
 - (a) that the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

Communications Information Services, Inc. has provided an evaluation of the proposed request for the cell tower. The findings were that a facility in this area is reasonably necessary to the I-235 and the adjacent areas. It pointed to two potential existing sites, the existing tower located at the Cleaveland Traditional Magnet School, and Site 62 (3101 South All Hallows). Cellular One has responded that Site 62 is too far north to provide adequate coverage of the holes in service that they are experiencing. CIS

confirmed verbally that Site 62 is far enough to the north that even if Cellular One were to co-locate on this tower, it would still be faced with needing improved coverage to the south of I-235 and need to build an additional tower in that vicinity. Cellular One has agreed that the Cleaveland Elementary site would be an adequate substitute for the South YMCA site and would be willing to use it if it is available. At the time of preparation of the staff report it was not known if the school site would be available.

Recent communications to Cellular One provided to Staff has indicated that AT&T is interested in co-locating on the site.

The surrounding land use is a mix of institutional, quasi-institutional and transportation uses. As previously mentioned, Parcel 5 is carved out of the southwest corner of a 58 acre tract (Parcel 4 of Meridian Mall Outlet) that is being developed as the Wichita YMCA South Branch ("YMCA"). The YMCA is constructing a large indoor recreation facility on the center of the tract, accessed from a serpentine parkway connecting with Meridian. The site plan includes eventual development of eight soccer fields and 18 baseball/softball fields. To the west of the site, there is a drainage channel and a large open field owned by USD #259. Cleaveland Traditional Magnet Elementary School is located on the northern portion of the tract. To the south of the site is I-235, but there is no direct access to the highway from the site. There are two large church properties located south of I-235 across from the site. The nearest residential areas are Southwest Village Fourth Addition beginning 900 feet northwest of the site and Southwest Village Third Addition beginning 1,200 feet north of the site.

CASE HISTORY: YMCA South Addition was platted July 7, 1998. The property was rezoned "LC" and approved as Meridian Outlet Mall Amendment #1 March 3, 1998.

ADJACENT ZONING AND LAND USE:

NORTH: "LC"	Wichita YMCA South Branch
SOUTH: "SF-6"	Drainage ditch, I-235, church
EAST: "LC"	Wichita YMCA South Branch
WEST: "SF-6"	Drainage channel, open field, Cleaveland Elementary School

PUBLIC SERVICES: This site has access across an open field to the YMCA's parking lot and from there, to Meridian. Traffic demand generated by the site would be minimal. Municipal water and sewer are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide identifies this area as appropriate for commercial development, medium and high density uses. However, the property was rezoned "LC" in 1998 as part of Amendment #1 to the CUP, effectively recommending commercial use for the entire Meridian Outlet Mall tract. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

The Transportation utilities locational guidelines in the Plan also recommend that utility facilities with significant noise, odor, and other nuisance elements should be located away from residential areas. Adopted policy in the treatment of communication towers is also established in the Zoning Code, regarding the need to document that no existing or approved towers or structures can meet the communication need, or an existing or approved tower or structure can be used, modified, or rebuilt before a new tower is permitted.

RECOMMENDATION: Staff feels that this is a potentially suitable site for a communication tower. The tower would be separated from residential uses by drainage channels, I-235, a school, a large open field, and the YMCA recreational fields. However, since it has not yet been determined that this is the only feasible option, due to the possibility of utilizing the Cleaveland School site, staff recommends deferring this request until it has been determined if Cellular One can co-locate at Cleveland School. Should the MAPC vote to approve this request, we recommend the motion and findings as follows:

- A. APPROVE the rezoning from "LC" Limited Commercial to "GC" General Commercial.
- B. APPROVE the amendment to the Meridian Outlet Mall C.U.P. to allow a communication tower on Parcel 5, subject to the following conditions:
 1. The site shall be developed in general conformance with the approved site plan, with a six-foot tall chain link fence constructed around the perimeter of the site. The 85 foot by 85 foot area shall only be used for a communication tower and related equipment.
 2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.
 3. The applicant shall file and receive approval for a variance request to reduce the compatibility setback requirement from 345 feet to 50 feet for a 150-foot tall communication tower.
 4. The tower shall be a monopole type tower and not exceed 150 feet in height and be in conformance with the site plan as approved and attached hereto.

This recommendation is based on the following findings:

1. The zoning uses and character of the neighborhood: There are large open spaces located on all sides of Parcel 4. The nearest buildings are the YMCA, a school, and a church. A drainage ditch is located just to the west and south of the application area. The closest residential development is approximately 900 feet northwest of the application area.

2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and is undeveloped. There is no "GC" General Commercial zoning in the area but because it is such a small area and the conditions placed on the request it is unlikely that there are any possible uses of this property, which would be unsuitable for the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the north and northwest should not be significantly impacted due to the separation by other uses between the tower and the residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for medium density residential use, however since the remaining portion of the area already is being developed as commercial (YMCA), it is unlikely any of the tract could be utilized for medium density residential.
5. Impact of the proposed development on community facilities: None identified.

KROUT "Let me explain to the Planning Commission why I think we are getting a request for a deferral. You may have heard that the City Council did approve the CUP amendment and the rezoning for the Carriage Park Tower, but after that motion they also voted to direct the staff to bring back a resolution to consider adopting a moratorium on the permitting of new towers for a 6 month period and that period time would coincide with the study that we hope to have under way, beginning next month. We have Request for Proposals out, and we have proposals coming in, so we do hope to hire a consultant team to work on a study that would be at least City-wide and possibly involve county as well as city land.

So, given that circumstance and given the fact that there is still the potential for Cellular One to cooperate with Cleveland School, right next door, which has a tower that could be capable of being modified or rebuilt, and given that the school board, Monday night said that they were not going to take any actions on working with carriers on rebuilding or modifying, or locating equipment on our towers until after the City's study is done because we want to be in sync with the City's study. We can't say that there is not still an opportunity, but we also can't say that there is, right now, an opportunity for Cleveland School.

So, we suggested to the applicant that the best thing to do is to request a deferral. If they are requesting a deferral for two weeks, which will give them enough time to see exactly what the City Council does next Tuesday in terms of a moratorium, I think that maybe the applicant's agent may want to add to that. But that is the situation as we understand it."

JOHNSON "Applicant or agent."

RUSS EWY "I am with the Baughman Company, agent for the applicant. As Marvin said, we would be agreeable, I guess, to the 2-week deferral in order to clarify this moratorium that was proposed last Tuesday. Unless, of course, you all figure that you have enough evidence in front of you to make an overwhelming approval today. We would accept that also. In light of that, we would be agreeable to the deferral. Do you have any questions about what we are proposing that can't wait?"

WHEELER "Marvin, if we deferred this for two weeks and then they adopt a moratorium, then this may be put off for 6 months then, is that the case?"

KROUT "Yes. Joe, would that action preclude the Planning Commission from taking action?"

JOE ALLEN LANG, Law Department, "There is nothing that would legally preclude the MAPC from acting on it today, but it is rezoning, it would go to the City Council, and they would express an opinion on what they are going to do with it."

MOTION: That the item be deferred for 2 weeks.

FRYE moved, **MCKAY** seconded the motion.

JOHNSON "Is there anybody else here to speak on this item?"

KROUT "By the way, this is new Commissioner Ron Marnell. He came in a little late, so we didn't get a chance to introduce him appropriately. He was appointed by Councilmember Martz. Didn't you say you wanted to abstain on this item due to a conflict of interest?"

MARNELL "Yes. If you look at the documents, I am probably the one who signed them. I probably should abstain."

KROUT "I would say so."

VOTE ON THE MOTION: The motion carried with 12 votes in favor. There was no opposition. Marnell abstained.

4. **Case No. CU-526** – Halfway House for Adults, Inc. c/o Alan McGregor, request a Conditional Use to permit a correctional placement residence on property described as:

The East 6 feet of Lot 118, all of Lots 120 and 122, the West 10 feet of Lot 124, the South 100' of the East 15 feet of Lot 124, the South 100 feet of Lot 126, and the South 100 feet of the West 10 feet of Lot 128, all on Central Avenue in Central Avenue Addition to the city of Wichita, Sedgwick County, Kansas.

And

The North 40 feet of the East 15 feet of Lot 124 and the North 40 feet of Lots 126, 128, 130 and 132, on Central Avenue in Central Avenue Addition to the City of Wichita, Sedgwick County, Kansas.

And

Lots 1,3,5 and 7, on Chautauqua Avenue in central Avenue Addition to the City of Wichita, Sedgwick County, Kansas.
Generally located north of Central and west of Chautauqua.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use permit to allow a correctional placement residence on property zoned "LC" Limited Commercial located north of Central and west of Chautauqua. A portion of the property is zoned "TF-3" Two-family but would be limited to a parking lot through a BZA use exception approved in 1980 for ancillary parking.

Correctional placement residences are permitted "by-right" in areas zoned "LC", as well as other commercial and industrial districts, except when the property is located within 750 feet from a residential zone (unless it is separated by a major barrier). In this case, a correctional placement residence requires a Conditional Use permit.

The existing facility is located in a City-owned building at 1137 North Broadway and has to be relocated because they lost their lease. The applicant has stated that there will be a total of 33 (24 men and nine females) persons at this location, with all individuals being federal pretrial or pre release inmates. The applicant has stated that as a rule, "no individuals at this location would be convicted of violent crimes." All individuals would be required to be in the building by 9 p.m. unless at work. The only place for individuals to be outside of the building is a small smoking area north of the main building, which has a camera on it at all times. No persons would be permitted to loiter in the neighborhood.

There is currently a vacant 6,992 square foot building located along Central with 16 parking spaces to the west of this building. The site would have one opening to Central and would be connected to four lots along Chautauqua. These four lots along Chautauqua consist of an existing home and 22 parking spaces. A six-foot tall fence is located along west and north property lines on these four lots. The applicant's site plan shows two openings to Chautauqua, one of these will be constructed if approved.

The Unified Zoning Code requires correctional placement residences, general to provide one parking space per occupant plus one parking space. Therefore, the applicant would be required to provide 34 parking spaces. The site plan shows a total of 37 parking spaces. Therefore, the applicant would meet the Unified Zoning Code parking requirement.

There are commercial properties to the east, south and west of the application area zoned "LC" Limited Commercial. North of the property are single family homes zoned "SF-6." There is a child care center located northwest of this property on Erie.

CASE HISTORY: BZA 50-80 approved a parking lot on the "TF-3" Two-family zoned property along Chautauqua, as an associated use with the building along Central.

ADJACENT ZONING AND LAND USE:

NORTH:	"TF-3"	Single-family homes
SOUTH:	"LC"	Health food store
EAST:	"LC"	Hair salon and restaurant
WEST:	"LC"	Clothing store

PUBLIC SERVICES: This site has access to Central, a four-lane arterial and Chautauqua, a local residential street. The current traffic volumes along Central are 18,084. The 2020 Transportation Plan estimates these volumes will increase to 28,283. The City of Wichita "Capital Improvement Program" does not plan any improvements to this section of Central in the next seven years.

CONFORMANCE TO PLANS/POLICIES: The "Wichita Land Use Guide" of the Comprehensive Plan identifies this area as appropriate for commercial uses.

The Area Treatment Classification Map identifies this area as a revitalization area: "Areas in this category are experiencing some decline, but good market and development opportunities still exist. The objective of this treatment strategy would be to stabilize the area and increase its attractiveness for private investment. Advantageous factors for successful revitalization efforts are good location, access to major employment concentrations, and neighborhood leadership. High priority actions would include improvement of community services, encouragement of well designed infill housing, improvements in amenities such as lighting, sidewalks, parks and other traditional neighborhood elements, and correction of housing deterioration. Rehabilitation and new construction efforts would be encouraged by substantial public investment in capital improvements, development incentives to emphasize innovative housing types and mixed use development, and low interest mortgages and other such risk-sharing devices. Physical improvements and flexible regulations (e.g. varying parking standards and setback requirements, waiving or reducing

permit fees) designed for the environment of inner parts of the community would be applied to create innovative and economically feasible projects."

RECOMMENDATION: Staff has spoken to the Wichita Police Department and also the president of Historic Midtown Neighborhood Association about the current location for the Halfway House for Adults. Neither of these people had any negative comments about this Halfway House, nor did they believe that it was detrimental to the neighborhood. The Police Department provided a list of incidents at the existing location and also 1100 block of North Broadway. This list is attached.

The area which they are requesting to move into is a revitalization area as defined by the Comprehensive Plan, which means the area needs special consideration when determining appropriate land uses. This area along Central has several small businesses which are strong assets for the residential neighborhoods to the north and south. The introduction of the proposed halfway house could detract from the positive image of this business area, and make it more difficult to retain and attract quality businesses. Planning Staff believes that due to the neighborhood opposition, surrounding residential and commercial properties, and the de-stabilizing impact this use could possibly have on these surrounding land uses, this use is not appropriate at this location.

Planning staff recognizes that this particular halfway house operator has had an excellent record, especially in comparison to other operators in the city. However, this application should be evaluated as to its land use impact. Since the implementation of new zoning and licensing provisions in recent years, staff has encouraged these facilities to locate away from residential neighborhoods. The only Conditional Use requests to come before the MAPC were 1) a facility in a transitional neighborhood near (Murdock/9th Street) and the inclusion of a limited number of correctional residents in an already established alcohol/drug rehab facility at George Washington and Funston. Although the operator has made numerous inquiries about other available properties, some of those properties were in similarly questionable locations, and there seems to be other available areas, such as west of I-135, which have not been researched.

However, if the Planning Commission believes this is an appropriate use at this location, staff recommends the following conditions be placed on this request:

1. The applicant shall obtain all applicable permits, including but not limited to: building, health, zoning, and applicable federal, state, and local licensure requirements for operation of a correctional placement residence.
2. The Conditional Use permit shall be reviewed for compliance and renewal at the end of five (5) years, by reapplication with property notice and hearing. The Conditional Use may be extended if it is deemed appropriate to do so at that time.
3. This site shall serve no more than 33 individuals or offenders who fit within the criteria of a correctional placement resident, as defined in the "Correctional Residential Placement, General" classification of the Unified Zoning Code Article II-b (3) (q). Such individuals and offenders shall be limited to those individuals convicted of nonviolent crimes or awaiting trial for nonviolent crimes.
4. The site shall be developed in general conformance with the approved site plan, except that the two parking spaces located along the south portion of the parking lot closest to Central shall be removed.
5. Any violation of these conditions shall render this "Conditional Use" permit null and void.

This recommendation is based on the following findings:

The zoning, uses and character of the neighborhood: There are businesses located to the east, west and south of the building on the application area. These properties are zoned "LC" Limited Commercial. To the north, east and west of the parking lot and single-family home on-site are single-family homes on property zoned "TF-3." A day care facility also exists northwest of the application area.

The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "LC" and "TF-3." The applicant or the current owner has not provided any information on why this property could not be developed with a permitted use in these districts.

Extent to which removal of the restrictions will detrimentally affect nearby property: If the Conditional Use, is granted then the stigma of 33 criminal offenders living in this neighborhood could detrimentally affect the image and marketability of the surrounding properties and businesses. The neighbors and businesses have already voiced concern about the possibility of this relocation and about the impact on businesses and residential property not wanting to be located adjacent or across the street from this type of business.

Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Comprehensive Plan identifies this area as appropriate for commercial uses.

The Area Treatment Classification Map identifies this area as a revitalization area. Areas in this category are experiencing some decline, but good market and development opportunities still exist. The homes and businesses, which surround the application area, are occupied and seem to be well maintained. Staff believes if this request is approved it could possibly be detrimental to the surrounding properties and the revitalization effort ongoing in this area therefore the request would work against the revitalization efforts ongoing in this area.

Neighborhood opposition: The applicant did attend two neighborhood meetings (Elm and Uptown). Staff understands that there were several neighbors at both of these meetings who voiced opposition to this request. There also have been three protest petitions filed prior to the meeting.

Impact of the proposed development on community facilities: None identified.

GOOCH "Are there any questions of staff?"

JOHNSON "Are there questions?"

PLATT "I need to report that I have been contacted on this item."

OSBORNE-HOWES "I have, too."

KROUT "Do you want to tell us the nature of that contact for the record?"

PLATT "Yes, I was contacted by one of the business owners in the area in opposition."

OSBORNE-HOWES "I was contacted by someone connected with the halfway house."

FRYE "I was contacted by someone in the neighborhood. Just mainly for information."

MCKAY "Would you go back to the slide just before this last one, when you were going northwest? The subject property, is that to the left?"

GOOCH "Yes."

MCKAY "So the vacant area is the subject property?"

GOOCH "They show a house on their site plan that they submitted; however, when I was out there, I didn't see a house there. I am not sure. It is the fenced area that you can see, yes."

JOHNSON "Are there any other questions of staff?"

MARNELL "With regard to the conditions that are on Page 4., do you have an idea of the amount of investment that the proponent would be putting in to this kind of a facility?"

GOOCH "All I can tell you, and I will let them tell you more, but I think they are buying this piece of property, not leasing it."

MARNELL "Wouldn't that 5 year restriction for the use for which they are specifically developing seem unreasonable?"

GOOCH "In staff's opinion, after 5 years we will have to look at it. It could have a severe impact on the surrounding properties, businesses and homes in the general area. I think it would be a sufficient time for us to get a good study on how the impact of this facility, if it does go in here, has impacted the surrounding properties."

KROUT "The other half of that question, though, is is this a reasonable time period given the investment that is going to be made in the property, which is something that we do try to evaluate every time we recommend a time limit. In this case, if this was new construction on a site, it would be more substantial investment, and we probably wouldn't be recommending as little as 5 years, but this is a rehab of an existing building, and it will have other uses, after the 5 years is up. Although I understand that there will be fairly substantial rehabilitation and renovation because there aren't any exterior windows and maybe the applicant can talk more about that. I guess we felt that anything less than 5 years."

LOPEZ "And staff's recommendation is for denial?"

GOOCH "It is for denial, yes."

WARREN "Where is this facility now?"

GOOCH "It is at 1137 North Broadway."

KROUT "That is a City owned property. In Mid-town."

LOPEZ "Did you have a slide of the actual area?"

GOOCH "The existing location?"

LOPEZ "Yes."

GOOCH "No."

LOPEZ "It is right across the street from Mid-Town Resources."

FRYE "That is where it is located now?"

GOOCH "Yes."

JOHNSON "Any other questions of staff? Thank you, Keith. Applicant or agent."

ALAN MCGREGOR "Good afternoon, and thank you for hearing our petition. I am the Executor Director for the Halfway House for Adults. We have been in business for 30 years now. We have been performing our services at our current location for the last 23 years. In that time, we have had an excellent track record performing our services. We have been accredited by the American Correctional Association, which is the highest honor that any correctional program, jail, prison, juvenile detention facility that any program can attain. We have developed excellent relationships with our neighbors, both business and private. We have been very supportive of them and respectful of their needs. You have heard mentioned the Mid-Town Community resource center. We were very supportive of them. We have donated dozens of hours, our staff and our residents in helping them get that open.

We have been very respectful and supportive of the gas station, which is right next to us right now. It has been there for many, many years. The business owner at the Mark 8 Inn, right across the street from us has been there 18 years and reports no concerns about us being across the street from them.

The bottom line is that while I recognize that there are residents in the area of Central and Hillside who have invested a great deal of their time and money in developing businesses and residences there, and I respect that. I appreciate that. But the concerns that I have heard thus far have not been borne out by our experiences at our current location. We have not been a negative influence on the neighborhood, in fact, many new businesses have opened up in that neighborhood since we have been there, especially the over \$ million that has gone in to the Mid-Town community resource center. A new 47-bed hotel has gone in just a block and a half from us in the last year and a half, charging \$55 a night. I was told today that they do an excellent business and they are very pleased with the way their business is going. They have no concerns about us.

We have maintained a very low profile. We think that is appropriate for our business. Unfortunately when this time comes now, our story has to be told, for the first time because many times we run into people who do not know that we even exist. A couple of weeks ago, my program director ran into a business owner in the area. He runs a bed and breakfast inn a block and a half away from our current facility. He was very surprised to know that after six years of operating there that there was a halfway house a block and a half away. As I have tried to explain to the concerned neighborhood leaders, not all halfway houses are created equally. We have been required to, and have maintained the highest standards in the industry for 30 years. If we had been a negative influence on the neighborhood, I think it would have been borne out by the Police Department and by our current neighborhood association's reports. We work extremely hard at being a good neighbor.

Over 99 per cent of the people that come through our program are not involved in any incidences in a community. We do not serve murderers, rapists, sex offenders. These are non-violent individuals who are about to be released into the community. It is our job to make sure that they are ready. The ones who are not ready, we weed out and send them back. The ones that are ready, we help make sure that they are going to be law abiding, productive citizens. We have been doing this for a long time. Long before I came around three years ago, we did it very well, and we continue to. We ask for the opportunity to continue to provide this service at this new location. Thank you very much."

FRYE "I have a couple of questions. Your present location, I see from the information that we have that the City is raising the rent from \$1.00 to \$1,000 per month."

MCGREGOR "That is correct."

FRYE "Is this because they really do want you out? Is that what they want? You know, if you suddenly raise your rent from \$1.00 to \$1,000, especially if you are a non-profit group....is the message 'we want you out?' Is that the message?"

MCGREGOR "I cannot speak for the City, but I can tell you my experiences. The condition of the house that we are in now has started to deteriorate. It has been cited by Central Inspection."

FRYE "Okay. I think that answers my question."

MCGREGOR "I have been told that they would like to complete the repairs to the house and put it on the market."

FRYE "Okay. The other question I have is if you were to look at where you are located now, which I am familiar with, and you would look at the location where you are proposing, would you not agree that the character, the shape and the looks of that neighborhood versus the other neighborhood is totally different?"

MCGREGOR "I would agree that there are some differences in the neighborhood."

FRYE "You are actually on Broadway, which makes you more commercial zoning oriented, whereas you are talking about actually infringing upon a neighborhood, correct?"

MCGREGOR "Well, the zoning, I believe, is identical in both of them."

FRYE "Forget about the zoning, I am talking about the character of the neighborhood."

MCGREGOR "Well, obviously, the neighborhoods are different. The characteristics of the neighborhoods are different. North Broadway does not have a very good reputation, but that is not because of us, obviously. East Central has a better reputation. I don't know what else I can say about that."

GAROFALO "I don't think this is correct, in the staff report. It says 'the individuals are federal pre-trial or pre-release inmates. Aren't they all people who have been through the process?'"

MCGREGOR "We have two contracts. One is for pre-trial services. The process there is that the judge may release an individual on bond as they are awaiting trial. If they feel that they would like a little more supervision over that individual, they refer them to our house for 30 days where we continue to supervise them, make sure that they are being tested for drugs, make sure that they are reporting to their probation officer and make sure that they are going to comply with the court's orders in the meantime. SO, yes, we do have those types of clients. They make up less than 5 per cent of our total population."

GAROFALO "So these people are basically awaiting trial, or some resolution of their case?"

MCGREGOR "Yes sir, that is correct."

WARREN "Are your fees pretty much established by the courts, or is this a competitive bidding type thing? How do you arrive at them, even though you are non-profit?"

MCGREGOR "We bid for contracts with the bureau of prisons and the U.S. Probation. Those are five-year contracts. Through negotiations, that is how those amounts are decided. We work solely under contract with the federal government. We do not charge any fees of our clients, although the government does require them to pay 25% of their gross income, which goes back to the federal government."

JOHNSON "Are there any other questions of the applicant? Thank you. Marvin, do you have a comment?"

KROUT "Yes. Before we go into the rest of the hearing, so that both the applicant and anyone else will have an opportunity to speak to this, in case they want to, I just want to refer you to item 'C' in the conditions. You know we said before that when we are dealing with land use issues, we need to deal with the land use and not with the individual user. On the other hand, we did feel that if you were going to make an exception, and we are not recommending it, that maybe you could take into consideration the fact that these were non-violent crimes, that these were federal crimes, and that it was a federally run institution, and also that it was a non-profit institution as opposed to a for-profit institution, because we have seen different levels of service and problems between non-profit and for-profit institutions. However, we had already taken out, I guess, after discussion with the law office, the non-profit, so this is not necessarily going to be, in the future. This could be sold to another user who would be a for-profit as well as a non-profit."

The other item, in talking just now with Joe Lang was that we really need to remove federal crimes out, but then it is too particular, I think. We do have a licensing requirement for all halfway houses, and that is where users need to meet minimum standards. They are inspected on an annual basis to meet minimum standards. But Item C should really have the words 'federal crimes' removed. You can leave in non-violent, but we shouldn't limit it. It is too particular in terms of identifying a particular user as opposed to a land use to limit it to federal crimes only."

OSBORNE-HOWES "Can I ask a quick question of staff, since you brought up a couple of things? Wasn't there a group that sort of studied where certain half-way houses should be placed in our community and was that used when you were evaluating this?"

KROUT "That group did review the zoning code and also establish licensing requirements, and the rule was that if you were 750 feet away from a residential district in an industrial zone, then you were permitted by right. I think the intention was to try to encourage these to locate away from residential areas as much as possible. We have had a couple of Conditional Uses where they were within 750 feet, although nothing on this scale, or not in a neighborhood that is equivalent to this one."

OSBORNE-HOWES "I just noticed that you didn't refer to it and I wondered."

KROUT "There is also a requirement in the licensing provisions, not in the Zoning Code, that halfway houses must be spaced at least 750 feet from each other so that there won't be one next to one."

WARREN "We have sort of a simulated halfway house, as I recall, on Topeka and William, no, Topeka and Water. That is kind of in a commercial setting. Would this, in appearance, look more residential by and large, or are these commercial buildings?"

KROUT "Maybe Keith has it if you are interested, we have eight licensed facilities and you can pass the map around to show where those are all located. I think what you are talking about is the work release center down at Topeka and Lewis, or Waterman?"

WARREN "Yeah."

KROUT "I think downtown is one of those other permitted districts along with the industrial, if it is faced away from others. This building, as you saw, is a commercial building, an office building. It is a windowless building, so in order to meet occupancy requirements, they are going to have to cut some windows in those walls. But it is a commercial building that fronts on Central but the parking area extends back to the residential street."

MILLER "The separation between the two may be 1200 feet, now that I think about it a little bit, Marvin."

JOHNSON "Are there any other questions? Is there anyone else here to speak in favor of this item?"

ELIZABETH BISHOP "I live at 8518 Longlake. While I have not worked directly with the halfway house for adults, I think that those of you that were around then remember that about four, maybe almost five years ago, I appeared before this board to protest the fact that halfway houses were cropping up in neighborhoods all across the city. You did take note of that and indicate that perhaps some changes needed to be made to the Zoning Code to reflect that. Part of our difficulty at that time, speaking on behalf of the Wichita Independent Neighborhoods at that time, was that we were not getting enforcement of even the current zoning code that existed. Since then, the alternative correctional housing study group, which we met with weekly.....weekly folks, for about 6 months, almost 7 months, hammering out a number of solutions to the difficulties of how to place halfway houses, how they should operate, and how to deal with the problems that arise because of them.

I might tell you that one of the central issues that brought that forward was the fact that there were a number of them located in Mid-town. I think it was going on four. The fourth one was being developed in one block, between an intersection and an intersection, which is just basically stripping the whole thing out as halfway houses. All of that has been addressed. There is a density issue, as Mr. Krout has pointed out, licensure auditing, I now serve on the alternative correctional housing board. We look at that map that you have before you every single month. We discuss those cases that are coming up where somebody either has licensure; or, we also track addresses of offenders coming into the community and track where they are being located, so that if there is a program that the magic figure is three, the minute they accept that third resident that is placed there as an alternative correctional placement, they need to secure licensure. We have discovered that we actually have to monitor that quite closely, with the tremendous help of the office of Central Inspection.

I would also like to tell you that Bill Fox has served on the board of the Halfway House for Adults, I believe, for about 20 years. As you know, Bill is a strong proponent of neighborhoods. He has served as the president of Riverside Neighborhood Association for a number of years. I think largely because of his influence, the Halfway House for Adults, I know has always conducted itself as a good neighbor. I know that has been pointed out to you, but I would just like to underline that.

Lastly, I believe, and you might want to ask Mr. McGregor this question, but I believe the Halfway House for adults is the only federal program in the state, and as such is somewhat of a unique resource for federal prisoners that wish to relocate in the state of Kansas with the kind of supervision and monitoring and oversight that the Halfway House for Adults conducts.

The issue of the current location, I believe, if I am not mistaken, and again, perhaps Mr. McGregor could clarify this, that their current location has a historic designation, which complicates the City's process of working with the house, the property that the city owns and just basically needs an awful lot of repair, including the porch. They tried looking at some bids on repairing the porch and it was about \$70,000 for the porch itself. So I think that is part of the complicating factor, the reason that another site has to be sought. And because of the alternative correctional housing process, it is more difficult to find good siting locations. That is all I have to say. I would be happy to answer any questions."

OSBORNE-HOWES "Elizabeth, you are speaking in support?"

BISHOP "Yes."

OSBORNE-HOWES "One of the things that we will have to deal with when we come to a decision is that we tend to look at zoning, and you are very familiar with our decision making process; the land use versus looking at a particular application or applicant that chooses."

BISHOP "I understand that, and I think that the location is somewhat problematic. I know with a lot of the programs going out to areas where there is a more solid area of commercial non-retail, etc. is difficult because frequently those are out. Take the one, for instance, on Tobin Street, way northeast with 60 some residents. Transportation has to be provided, pretty much, for all of them. It gets increasingly difficult in terms of transportation, and starting over frequently means you have to use public transportation. That is one of the difficulty factors. I guess, Susan, also, to explain why I would be here in support of this application when I know that it is a difficulty for a neighborhood is that the whole process that we went through for those 8 months and the 5 years since, it has solidified the responsibility and the accountability of these programs pretty much across the board.

There are notification requirements placed on them where they have to notify schools and neighborhood associations in the area about certain events. There are all kinds of requirements additionally placed on them. One of the outcomes of that is that it is more difficult to find sites."

JOHNSON "Is there anyone else to speak in favor of this?"

CHARLES MERRIFIELD "I live at 1134 Charlotte. I am the Chairman of the Board of the Halfway House for Adults. I have served on the board of the Halfway House for Adults for the past 20 years."

JOHNSON "Just a minute, sir."

KROUT "Was there any time left from the applicant to continue, do you recall?"

MILLER "Thirty-seven seconds."

KROUT "This is part of the application, so officially you have 37 seconds left, but you might ask for more time."

MERRIFIELD "Okay. Could I have more time?"

MOTION: That the speaker's time be extended for 5 minutes.

WARREN moved, **FRYE** seconded the motion, and it carried unanimously.

MERRIFIELD "The Halfway House has an excellent record in the community as Allen McGregor, our director, has pointed out. Our neighborhood is very cordial with us. We get along well with them. The issue of the status of the house, which Mr. Frye raised, it is basically my understanding that the City wants to get out of the real estate business in terms of owning properties. They would like to sell the house, make whatever they can on it and do something else. The current status of the building, for the last 5 or 6 years, the board has been concerned with the porch, and we have been attempting to negotiate with the City on repairing the porch.

One other thing I should mention is that you may recall, as we mentioned earlier, that when there were halfway houses popping up all over the place and the Wichita Eagle ran a variety of articles and a variety of government agencies became involved in the halfway house issue, it was our halfway house that was used as the example of what a halfway house is supposed to be like. Our Executive Director served on that advisory board, and currently members of our board, along with our current Director serve on that advisory board. So we are basically the authority on halfway houses and how halfway houses should be run in Wichita. Thank you for your time."

FRYE "If the City owns it, and you have been there 23 years, they haven't been very good landlords, have they? If they haven't kept the property up. Were they to keep up the property?"

MERRIFIELD "It was always vague on that. We attempted to take care of what needed to be taken care of for heating, plumbing, etc. We spent much on plumbing."

FRYE "But you haven't done anything major. You haven't had any capitol improvement. My reason for asking that question is that on this new facility, then, how do you propose, when you have only been paying one dollar a month for the facility, how do you propose to finance this and maintain it in excellent condition? What is your plan? I just think it is important to know that."

MERRIFIELD "Well, our plan is to re-negotiate with the federal government when we can, and I believe we can within the next year. We have been building up money so that we can handle this financially. We have taken a loan to buy the property, so it is our belief that we can handle the financial responsibilities."

FRYE "Okay, thank you."

GAROFALO "Sir, in the staff report here, it mentions that although the applicant has made numerous inquiries about other available properties, some of those properties were in similarly questionable locations. There seems to be other available areas, such as east of I-135, which have not been researched. Can you respond to that?"

MERRIFIELD "Yes, we have researched east of I-135."

FRYE "The facility they are proposing is east of I-135."

KROUT "That said east but it meant west."

GAROFALO "Okay, west of I-135."

MERRIFIELD "We have looked all over the downtown area, we have looked at the Mid-Town area, we have looked all over town."

GAROFALO "Have you talked to staff about what they might have in mind?"

MERRIFIELD "Yes, we have. They didn't come up with any specifics."

MARNELL "I don't know what the role of the Commission would be, but if they look favorable on this, how do you view that 5 year restriction?"

MERRIFIELD "Well, I think some type of restriction actually makes sense here because the neighborhood has raised the issue of what happens if you guys leave and yet this property has the variance for this purpose? Basically we are a very reputable, solid firm, but what happens if we leave and some fly-by-night group comes in? So, having some type of restriction like that does make sense.

I would prefer maybe a 10-year restriction. The 5-year restriction may make it difficult for us to get financing that we need to make the investment that we need in the building. I think something like that does make sense. Myself, I would prefer 10 years."

OSBORNE-HOWES "In reading the CPO minutes where they voted 8-0 to deny this, but they recommended to the City that the City drop the \$1,000 per month rent requirement and actively assist you in relocating. So I guess my question is, 'have they actively assisted you thus far in relocating, and how much notice did they give you?' I am just curious as to what you will do if this is denied."

MERRIFIELD "What we would do if this were denied is stay where we are and attempt to negotiate with them. Then continue the effort to find some facility."

OSBORNE-HOWES "Have they actively helped you?"

MERRIFIELD "I wasn't Chairman of the Board at that point, so the person to answer that question would be our Executive Director."

MICHAELIS "Do you have any other expenses where you are now other than the dollar?"

MERRIFIELD "Oh, yes, we do."

MICHAELIS "I mean in relation to going out and buying a property, obtaining a loan and how would that cost weigh versus even the \$1,000 cost?"

MERRIFIELD "Well, we spend quite a bit each month on repairs; our electric bill is quite high. Actually, this is a question that our Executive Director could answer in better detail than I can."

JOHNSON "Is there anyone else here to speak in favor of this item? Is there anyone here to speak in opposition? Please come forward."

MELINDA FOLEY "Thank you for letting me have the opportunity to speak to you this afternoon. I am the General Manager of Food for Thought, Inc., which is located at 2929 East Central, directly across the street from the property in discussion today. I would like to give you a little bit of the history of our business this afternoon. We have been in business since 1971, when we started out at 2831 East Central. We moved to a larger location in 1991 at 2819 East Central, and in 1995, we purchased the property which was the former Larcher's Building at 2929 East Central, where we are currently operating our business."

We have made a major financial commitment to this area of town. An area of town that is somewhat overlooked by the City. The City seems to really be focusing on Old Town, the 21st Street improvement project that has been going on, and we feel that we have made a very positive impact in the neighborhood that we are currently servicing.

I grew up in the College Hill neighborhood area in one of the landmark homes here in Wichita, so I have a very fond association with this area of town. We did look at other areas in the City before we purchased this building because the area we are located in now has some somewhat of a shaky reputation from time to time. But we felt committed to go ahead and continue in this area and hopefully make a strong positive impact. We have made major improvements to the property and we also own the residence directly south of the property at 435 North Chautauqua, so not only am I speaking as a business owner, but also a residential owner in that area.

We draw from all over the City and all over the State each day in our business. We have approximately 250 to 300 customers per day that come in our doors, and I can tell you right now that there has already been opposition by some of our customers who have somehow found out that there is the possibility of this halfway house being located across the street from our property. We generate a lot of tax dollars here in Wichita, both in sales tax and payroll taxes, etc. We employ 30 employees currently, both part and full-time who are tax-paying citizens. We employ a majority of women, and I also feel that this would be somewhat of a concern to the women that work in our business that a halfway house would be located directly across the street from our property.

Within the last few years, we were cut off at the knees with the Third Street drainage project, which has totally cut any access off to our location, except from the Central Street ingress and egress. That has caused some major grumbings from our customers. The only way you can get in or out is off of Central. I live close to the Douglas and Edgemoor area, and it would have been so much more convenient for me to continue to travel First Street. That has been done and we are doing the best we can with that. We don't want any more obstacles thrown in our way in order to run our business. I would like to know what the City or this Commission would do for us if the proposed zoning goes through, and as a result of that, our revenues continue to drop. I would like to come back here and see what you all would do for us.

There are a lot of buildings that are empty along Central Avenue right now, and I am afraid that it will turn into a 'ghost street', basically, west of Hillside if this proposed zoning goes through. There has been unlimited capital improvement dollars spent on 21st Street and in the Old Town area, and so we at least ask for a break in not having this proposed halfway house put in our location. Either that or I will be back to ask for money to update our area.

There is no guarantee that they will not serve non-violent prisoners in their halfway house. This is a question I asked Mr. McGregor the other night at the CPO meeting. Yes, right now they are operating as a non-profit organization, but what about when their non-profit bottom line is not making ends meet? He was not able to give me the assurance that they wouldn't then seek prisoners other than non-violent offenders. Obviously that is a major concern for both the business and the residential area. I would like to strongly urge you to listen to the CPO vote that was handed down, and urge you to deny the zoning change for this property. Thank you."

JOHNSON "Are there any questions? Thank you. Is there anyone else to speak in opposition? Please come forward."

HEATHER FAGEN "I live at 428 North Chautauqua, which is directly across the street from the facility. I currently rent property there. Pizza hut will not even deliver to my door because it is a questionable area. I do have three small children. They are 6, 5 and 2 years of age. My 6 and 5 year old do go to College Hill Elementary School and friends are not allowed to come over to play

because of the area. We have an abortion clinic right across, behind our alley that I have to answer questions about, I don't want to have to answer questions about drug dealers and non-violent criminals. Thank you."

JOHNSON "Any questions? Thank you. Is there anyone else who would like to speak in opposition?"

KAREN RIEGER "My husband and I own three businesses in the area; Rieger Medical Supply, Feminine Fashions, and we have a lease with Walgreen's Pharmacy on the corner. We have been in the area since 1956, so I speak both for businesses that we have there for so long, and we also have 10 rental properties that we have acquired over time along Chautauqua and Lorraine Streets. I am opposed to this particular placement of the halfway house in this particular neighborhood. If you have seen how that buildings sits, there is absolutely no space around it. It abuts up to the businesses on either side. There is absolutely no breathing space. Now on North Broadway you have a different community and you have more breathing space around the buildings. Here, at Central and Hillside, we abut up against each other and it is a very compact community. I think that is one reason why it would not work very well and the opinion has been made, and I am sure rightfully so, that this is a low-profile operation. I don't doubt that, but there is no way that this organization can have a low-profile operation in this building. It just won't work. You cannot put 30 to 40 adult people in this building and they are going to go to work and they are going to be coming and going. There is no way to hide it, so whatever else is it is going to be, it certainly isn't going to be low profile.

I have another point. If the City now thought that it would be such a good idea to put \$2 million into improving Third Street, why would you then want to ruin this by putting a halfway house for federal prisoners? Also, why would you want to encourage the formation of businesses? We are businesses and we pay taxes, and we are actually glad to pay taxes. Somebody has to pay them. Now, this is going to make it very difficult. We have older people who come to Rieger Medical. I have women in my store from the fashion store, and I have wonderful people who rent our properties. They have families, and I would have a great problem doing this and trying to explain this.

Since this organization does so well on north Broadway, why not persuade the City to do something? They are the landlord. They have been living with this contract for 23 years. Now they are kicking them out. If I did that as a business owner, somebody wouldn't be happy. So maybe something can be done as far as getting some City funding to help them. I do very much wish that you would not approve this particular property for this particular use. Thank you very much."

JOHNSON "Are there any questions? Anyone else to speak? Please come forward."

REVEREND CLYDE SAMILTON "I stay at 516 North Erie. I stay on the property directly behind where the facility wants to go. My house is the house where most of the kids in the neighborhood come play. I have two children and one granddaughter who live with me, and most of the kids come to my house and play. Where my driveway is is directly facing it, and my garage, where the kids all play directly faces this property. I only want to say a couple of things. They said that they are non-violent criminals. I ask you when does a non-violent criminal become a violent criminal?

I also would like to ask you if you would want to have this put beside your house where your kids play and have no control over what a person says or does when they are away from the facility, but what about when they are out and about and the people can't see them and don't have control?

We are buying our home there, and we intend to live there for a long time, and we have family members that come to visit and all of that, and I just think that if you have a criminal element over there, it will run off a lot of the people that come over in that area. The access to both driveways that they have there comes close to my property both ways. Even from Central Street, or if they come from the Chautauqua side, it is close to my property. So I am asking that you do not allow them to put this property there. They established their reputation on Broadway. The people over there know them. They are moving to a new neighborhood that people don't really want them in. I already see that as a negative thing. I would ask that you would not allow them to put this property there."

CINDY CHANG "I am the owner of Ah So Restaurant at 3002 East Central. I have been there exactly 20 years this month. I own the building and run the restaurant. Over the last 20 years we have had problems in our restaurant because of vandalisms. I couldn't even put up my nice oil painting in my entrance because of that. I have had armed robbery a couple of times in my restaurant, and then so many occasions of cars being damaged in our parking lot. Then, so many unpleasant instances in my area. But I try my best to put all of these things behind us and try to accommodate our customers in the best way we know how.

Luckily, in the last couple or three years, with the help of our homeowners' association, the place has been much better. I don't have any problems with vandalism or damage to the cars. The neighbors have been really nice, but it has been really bad in the evening time, even just driving along Hillside and Central. The further you go west, there is hardly anybody out in the evening. On Saturday it is the same thing. I had to close up on Saturdays. I am only open Monday through Friday, and our hours are 11:00 a.m. to 9:00 p.m. At night in the wintertime, there is hardly anybody there after 7:00, so I have to close up early. I have a few employees who stay with me. One girl has stayed with me 20 years. Sometimes I want to get out of this business, but I am still there, and I pay the taxes and I accommodate the customers. I want to stay in the business as much as I can. This institution's parking lot would be right across from my restaurant's parking lot, and you will notice that any time you go there, there are lots of neighborhood kids who live there and play in that area. I don't think it is a good idea to put this institution so very close to our area. Thank you."

JOHNSON "Are there any questions? Is there anyone else to speak in opposition?"

YOLANDA SAMILTON "I am the wife of Reverend Samilton who spoke a minute ago. Our house, as he said, sits right behind this building. Where would my peace of mind be? I feel for the business owners that work through the day, but I lay there and I sleep, and where would my peace of mind be to know that this facility is right there in my back yard?

I have a 7 and an 8-year-old child. We know the business owners because they are like right beside my house, and my children know the business owners, and a lot of times on the weekends when the businesses are closed, they know that when all of the cars leave they can go over and play in the parking lot. Most of the time, through the week, they play in our driveway. It would be a very bad, poor decision to make to allow any time of criminals whether they be federal, state or whatever kind of offenses they have made facility they come from to house them, in a halfway house right there next to my house and in my back yard.

I am raising my children to be as good as I know how to raise them to be. Not around the cigarette smoke, not around drinking. I am sue, because this parking lot is right there in my back yard, the whole parking lot is visible, and these people can look in my yard and see us, and my children can look over there. No doubt a lot of people in this world still smoke, although I do not. If my children look up and see these men or women whatever they house back there, smoking cigarettes, they will get the wrong idea thinking it is okay when it is not. Then everything I am instilling in my children and teaching them, there is a great possibility that with this halfway house over, because kid's minds are so gullible, they can switch their minds and think it is okay because they see a lot of people over there doing this thing.

These are just possibilities that go over in my mind that I think about. Then, when I drive up in my driveway, I choose not to look over there and imagine what is going on in these men and people's minds, or what might happen, or what they have done, or if they are going to get to be out on the streets for a two hour pass, you know when they walk past my house going to their job or whatever they are going to do, or they are going to be lurking around my house, looking at my house or trying to look in my house when I am sitting there with my door open. There area lot of things that go on in my mind, and I choose to have a peace of mind about most things, as best I can because there is so much bad out there. And I choose not to have this in my back yard, just right there where I live.

My children love to play in the water. Like my husband said, my granddaughter comes, she lives with us in the summer, and she is 10 years old. Her and my daughter and son love to put on their bathing suits, get the little daisy thing and dance around up under the water, and all of these men, or women that have been locked up for, only God knows how long, are going to be out there looking, and maybe fantasizing about my children. I just don't want to be subject to any possibilities of anything going on. I just ask that you guys just truly consider not having them to live over there in our residential area. Thank you."

GEORGIA MARTINEZ "Good afternoon. I live at 825 North Erie. I have lived there for 30 years, just like about all of the residents around there, old retirees and business people. We just oppose a halfway house in our area. We have had enough problems keeping all the drugs, drug dealers and houses out of our area, which we have done pretty well on. We just want you to consider or think about you having this halfway house being put beside you. Just about all of us are retired over there. The whole area.

I have asked Alan McGregor how much money were they paying him per person to house the clients per month. His quote was \$1,000. That means that that would be \$33,000 to \$40,000 a month, which they could have, being used on this house, this property on Broadway to keep it up. I know they have other expenses, but they could have been putting some of that on this property to keep it up. They were paying the City \$1.00 to stay there, but that is all. Then they were supposed to keep up the property themselves and not let it run down. So if they come over there and the property is run down, and they are getting money for housing people, and the property be going down, and our area the revenue is going to go down, too. So just think about it seriously and see if you would want them in your neighborhood. If you were retired people, think about how it would effect you. Thank you."

JOHNSON "Thank you. Is there anyone else to speak in opposition? Please come forward. How many more people want to speak in opposition on this issue? One more? Three. Please come forward."

PATRICE DOLENZ "I live at 405 North Chautauqua. That is the 400 block of Chautauqua...which, well, if I stand in the street I would look at this building that is the proposed site for the Halfway House for Adults. I am also the president of the Uptown Neighborhood Association. The Association is very young. We have only been together about a year and a half. Central is one of our dividing lines, the other neighborhood association involved is the Elm, and I believe they have only been in existence for about 6 months. They are north of this building.

I want to start by saying it is not politically correct to go against halfway houses. It is not really politically correct to be anti-criminals returning to society, or against alleged criminals awaiting trial. But this is a hard sell for our neighborhood, and I hope that you will consider that our neighborhood has really been struggling and trying, and it is, as you see in your staff report, a neighborhood that supposedly the City is trying to revitalize. When I go around and talk to neighbors, it is a hard sell. When I talked to the gentleman who lives in the 400 block of North Erie, who is in his 80s and says 'I have been in this neighborhood for 43 years, and it just doesn't seem we should, since things that are going good'. It is a hard sell to talk to a neighbor on my block who has a daycare center. And it is a hard sell to talk to the neighbor who is considering leaving since I spoke to her about this, and who has lived in the neighborhood several years. She is a very considerate person because she also counsels abused women in her spare time.

It is a hard sell to the neighborhood who lives in the back yard of the proposed site who has three beautiful children. Maybe this is destined that this group of people who will be here will be scrutinizing their daily living and the routines that are going on in their house. It is also a hard sell to say to her husband who recently lost a brother to criminal activity by a drive-by shooter. That was not in our neighborhood, but in the City of Wichita. I am not saying that I am against this program. I have talked to Mr. McGregor and I know of a person who is on the Board of Directors for it. They have done a great job where they are. I am wondering if maybe the great job they are doing is not in part, due to the beautiful place they are in right now. It doesn't look like a correctional facility as this one, if you saw pictures of it. It is in a doctor's building and it was a laboratory. But it doesn't look like a home. The place where they are now looks beautiful, maybe an apartment building with people coming and going all of the time.

If I was coming out of a correctional facility, and that was my first stop, I wouldn't mind being in this program. In fact, maybe it would really help me to see historical markers on the wall, and to know that I was in such a beautiful place with all of this beautiful carved woodwork that is down in the foyer when you walk in. We did visit both sites as a neighborhood, and when I walked in the other site, it was like 'wow'. When I talked to Mr. McGregor about what was he going to do in this site, he said he was going to put 10 men in one room, he thinks, and 10 women in another room. Now they are like maybe 3 to a bedroom. I know they have their regulations and their foot space, I have worked in group homes. I managed a group home, and we had regulations...so much space per individual. I don't think that I would be real thrilled to be placed in a room with 10 other women if I was coming out of a correctional facility. I don't think that would really foster my wanting to get back into the society in a positive way.

I don't know, at this point, as the Director, actually one of the people on the Board of Directors didn't think that it should go across the street from a facility that is located in Riverside that is up right now for sale, I think. I said 'why not'. He said 'gee, there is a residential area right across the street'. I asked what was the difference between those residents and ours. I am sorry, that is all I have to say at this time. Thank you for listening."

OSBORNE-HOWES "Ma'am, are you representing yourself or your neighborhood association."

DOLENZ "I can't say that I have talked to every single person in the neighborhood."

OSBORNE-HOWES "Your association hasn't taken a stand?"

DOLENZ "No. We haven't taken a stand one way or another. I do have petitions that over 100 people have signed, just kind of in that area, that they don't want the facility."

OSBORNE-HOWES "Thank you."

KROUT "Do you want the Planning Commission to see those petitions?"

DOLENZ "I do have them with me if you would like to see them. I know that the Elm Association presented their petitions that they had against the facility to the CPO on Monday night. I don't know if they have them with them, copies of them or not."

RICHARD FOLEY "I am one of the owners of Food for Thought at 2929 East Central. I have just a couple of statements to make. Right now, they classify the people that they care for in this particular halfway house as clients. Who is to say that maybe some of the 'clients' of a more violent nature would call to use the American's Disability Act and say they are being discriminated against and that they would like to get in to this halfway house? I think the Federal Government would have a problem on its hands. They would have to allow them in there. Maybe they could run a sale, two sex felons for three draft dodgers and fill it up that way.

I am opposed to this. The City has just recently negotiated to sell a motel building at Broadway and Kellogg to some out of town people. They purchased the building for \$3 million and they have a fire sale on now, they will sell it for \$1 million. It would be a dandy spot to have as a halfway house. I also oppose calling the residents in this thing clients. I think if they are offenders, they are offenders and they should be known as that. Calling them clients or any other soft term name is not going to change the fact that they have done criminal acts. Thank you very much for your time."

JOHNSON "Are there any questions? Thank you. Is there anyone else to speak in opposition. Wasn't there one more? Please come forward."

IVAN WELLS "I won't take but about a minute. I own the 500 block on north Lorraine and most of the 500 block on Central. I have a lot of tenants that I have talked to who have said that if this is approved they will be moving out. Then I won't have to worry about my windows, I will just have to worry about boarding them up."

JOHNSON "Is there anyone else to speak in opposition? Seeing none, the applicant has two minutes for rebuttal."

ALAN MCGREGOR "I know that this has to be a difficult decision. There have been many fears and concerns presented here today, and I don't want to take them for granted at all. These are people who have put a great deal of time and money into their neighborhood and deserve to be heard and respected for that. I do have a couple of things that I want to rebut. One is that I may have been misheard. I didn't say that I would accept violent criminals at any time, but that we might accept state offenders who were non-violent at some point in time.

There was a statement made that we should have maybe used our finances better, that we are receiving a great deal of money and maybe could have taken better care of our facility. I have documented over \$223,000 in expenses in the last 10 years on capital improvements and maintenance. Our agency has spent over \$10,000 a year to maintain that building. It is very expensive. The problem we had with the City with the lease was that we were expected to maintain it, except for reasonable wear and tear. We contended that over 23 years, reasonable wear and tear was showing on the front porch.

The last thing I would like to say is that at the CPO hearing, the last statement that was made that seemed to sum up the concerns, a gentleman very thoughtfully stood up, after having said nothing for the rest of the meeting, and said 'we appreciate your program and we respect you and we can see that you are doing a good job. We just don't want you to do it in our neighborhood'. I don't think there is a neighborhood in Wichita that will open their arms to a halfway house. But our record demonstrates that we can do a good job and we would like to work together with the residents and the business owners to make that as safe of a place as we can. Thank you very much."

MCKAY "In the minutes of the CPO meeting, it states that you have lost your lease with the City of Wichita, yet the gentleman who spoke when the question was asked 'what will you do if this is turned down'? You said we 'will just keep on existing where we are at'. Have you or have you not lost the lease, or did they just raise the rent?"

MCGREGOR "That is a good question. We were given 6 months to find another place to stay at the first of the year. We were told that if we did not find a place within 6 months, our rent would be raised to \$1,000 per month until we could move out."

MICHAELIS "I would like to commend you for the job you have done. Do I understand you right, basically, that if the City took the normal landlord-tenant relationship and maintained the property and did the things they were supposed to do to it, and you did the things that were normal, that you would be content in staying there?"

MCGREGOR "It would not have brought this situation to a head. The house is not designed for the type of business that we do. It is not handicapped accessible, does not meet ADA. It is very old and therefore the facilities, the plumbing, and the electricity are 110 years old. We experience problems with those every day. I heard someone say that it is a nicer place than what we would be in. Well, based upon the problems that we have had with the plumbing and other things like that, I don't think so."

MICHAELIS "I guess what I am asking is that you would not be opposed to staying if the property was brought back to a reasonable condition. The location is not a problem?"

MCGREGOR "The location is excellent. Quite honestly, we prefer Mid-Town. That is where I started my search a year and a half ago. After looking at 40 different properties, I ended up on east Central."

WARREN "Have you given consideration to buying this City property, or making them an offer? Apparently they don't want the real estate business."

MCGREGOR "I was informed that that was not an option, that the City would have to put it on the market and we would have to bid against anyone else that was interested in it. Considering the condition and age of the house, we just don't feel like that is a good investment for us. If we could make a sweetheart deal right now, we would have made it a long time ago and not have gone through the whole process."

JOHNSON "This facility that you are looking at on East Central, is it vacant now?"

MCGREGOR "It is vacant now. I believe it has been vacant a year and a half or more."

JOHNSON "Do you know what was in there before?"

MCGREGOR "Some sort of medical clinic or doctor's offices."

JOHNSON "Okay. Are there any other questions? Thank you, sir. What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff's recommendation to deny the item, I move that we recommend to the governing body that this application be denied.

FRYE moved, **GAROFALO** seconded the motion.

JOHNSON "Is there any further discussion?"

OSBORNE-HOWES "As long as we have listened to this, I think I would feel better if we had a little bit of discussion about it. I frankly don't know exactly how I am going to vote yet. I guess I am looking at both sides. I hear lots of people say that they don't want this in their neighborhood. I would imagine we would hear any neighborhood say that. One of the concerns I have about this location is that it abuts right up against single-family residential and that is probably one of my biggest concerns.

I have heard people talk in favor of this because it is a well-run facility and I know that we are looking at zoning and land-use issues; however, I feel for this agency. What are they going to do. To me, it doesn't sound like the City is a very good landlord. I hate to just cast them off in the dark with a \$1,000 per month rent and someplace that is in poor condition. They have been looking for months, too. That is not our problem, I know, but I sure would like to hear what someone else has to say."

MARNELL "I have a couple of questions for staff on this. As a Conditional Use permit, does a Conditional Use go with the property, or the owner-user?"

KROUT "It goes with the land, which means that this property, we have to build in the flexibility that some other user can take over this property in the future and can't specialize the conditions so tightly that it really narrows it down to this user, and that is why not only can we not say it is not a profit, but we also can't limit it to the extent of just being for federal crimes. So it goes with the land, goes with the property. We can say non-violent, and we have said that."

MARNELL "That was my next question."

FRYE "The reason for my making the motion to deny has nothing to do whatsoever with the program. I am familiar with halfway houses and have spent a great deal of my life working with various types of halfway houses. It has nothing to do with this program. It is an excellent program. We are talking about a land use here, and I don't think it is appropriate. That is the reason for my motion."

WHEELER "I would just echo John's comments. It is very close to single-family residential. I won't be supporting it."

MCKAY "I would think that with all of the land that the City owns downtown, they ought to be able to help them out somehow. Find another location."

VOTE ON THE MOTION: The motion carried with 13 votes in favor. There was no opposition. Fulp was not present.

KROUT "For the applicant, and also for the neighbors, the Planning Commission's action is considered final unless you appeal it within 14 days in writing to us, and then we would schedule it for the City Council to make a final decision. They will rely on the record of this hearing and not open it up for another public hearing. If that happens, we will let you know and the people who spoke when the City Council would consider this item."

Johnson left the meeting, Garofalo assumed the chair.

5. **Case No. DP-50 Carriage House Amendment #2** – Home Depot c/o Mike Boyd (Owner); T. G. Davis, Jr. c/o KDA, Inc. (Contract Purchaser); Austin Miller c/o Tim Austin (Agent); Everett Fettis (Agent) request an amendment to Parcels 4 and 6 of the Carriage House Plaza CUP to allow outdoor vehicle sales on property described as:

Lots 2 and 4, Carriage House Plaza 4th Addition, Sedgwick County, Kansas. Generally located northeast of McCormick Avenue and Kellogg Frontage Road, east of Home Depot. Generally located northeast of McCormick Avenue and Kellogg Frontage Road, east of Home Depot.

LISA VERTS, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting an amendment to Parcels 4 and 6 of the Carriage House Plaza C.U.P. to allow outdoor vehicle sales on a 10.79 acre platted tract of land located northeast of McCormick Avenue and Kellogg Frontage Road, and east of the existing Home Depot. Parcels 4 and 6 are currently limited to those uses permitted in the "LC" district. The Unified Zoning Code prohibits vehicle sales in the "LC" zoning classification unless a conditional use permit is acquired or an amendment is made to the applicable C.U.P.

North of the site are single-family homes on property zoned "SF-6". To the east are two-family homes, zoned "TF-3" and a recently vacated commercial building previously used as a furniture store on property zoned "LC". South, directly across Kellogg Frontage Road and Kellogg (US54) is Garnett Auto Supply on property zoned "LI" along with other commercial uses, included a used car lot. To the west, and part of the Carriage House Plaza C.U.P., is Home Depot on property zoned "GC" and "LC".

The applicant has submitted a site plan, which shows two vehicle sales lots, one with a 40,000 square foot building and the other with two smaller buildings totaling 40,150 square feet. Both lots have vehicle display and storage areas and customer parking. Staff notes that on the submitted site plan customer and employee parking is not adequate for the proposed use. The Unified Zoning Code requires auto businesses to provide customer parking at the rate of two spaces for the first 10,000 square feet and one space per each additional 10,000 square feet of lot area used for vehicle sales, display, or storage purposes, and one space per 500 square feet of building area. If this amendment request is approved, the applicant will be required to submit a revised accurate drawing detailing the square footage of display and storage area for vehicles and the parking spaces designated for customer and employee parking. Access to the two lots will be off of Kellogg Frontage Road. Parcel 6 will have independent access and Parcel 4 will have shared access with Parcel 5.

Staff notes a discrepancy between the current Carriage House Plaza C.U.P. and the recorded plat. Article 7-204(B) of the Wichita-Sedgwick County Subdivision Regulations states that, "[f]or subdivisions which are subject to the provisions of Commercial Community Unit Plans, the perimeters of proposed lots shall match the perimeters of C.U.P. parcel boundaries." If this amendment request is approved, the applicant will need to show compliance with the Subdivision Regulation by submitting a revised C.U.P. On the Carriage House Plaza C.U.P. Parcel 3 will increase from 11.10 acres to 11.55 acres± to accommodate a discrepancy between the recorded plat and C.U.P.

It is the understanding of staff that Parcel 4 will be lot split into three lots. The first lot will be the existing drainage easement (currently at the north side of Parcel 4), which will be retained and maintained by Home Depot. The second lot will coincide with Lot 1 on the submitted site plan, and the third lot will coincide with Lot 2 on the submitted site plan, excluding the current Parcel 6. The revised C.U.P. will need to show these changes prior to lot split approval.

CASE HISTORY: The Board of City Commissioners on December 2, 1980 approved The Carriage House Plaza C.U.P. There have been several adjustments to the C.U.P. which include adding permitted uses to existing Parcel 2 as well as clarifying fencing requirements of the outside sales areas. On June 9, 1998, the Wichita City Council approved a request for zone change from "LC" Limited Commercial and "SF-6" Single-Family Residential to "GC" General Commercial and "LC" Limited Commercial. At the same

time, they approved an Amendment to the C.U.P. that added 10 acres to the C.U.P. and revised the permitted use list and other conditions. This most recent history accommodated the development of the existing Home Depot.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-6" – Single-family homes
SOUTH: "LI" – Commercial activity, including Garnett Auto Supply
EAST: "LC" and "TF-3" – Two-family homes and vacant commercial building
WEST: "GC" and "LC" – Home Depot building and parking

PUBLIC SERVICES: This site has access to Kellogg, a four-lane expressway with 1995 traffic volumes of 34,714 vehicles per day from Mid-continent Drive to ½ mile west, and from this ½ mile point to Tyler Road the volumes decrease to 31,876. The 2020 Transportation Plan estimated the volumes to increase to 43,583 and 40,561, respectively, along these segments.

Municipal services are available to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for commercial uses. The commercial locational guidelines of the Plan recommend that commercial uses not located in planned centers, including auto-related uses, should be guided to cluster in areas such as CBD fringe, segments of Kellogg and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support these areas.

RECOMMENDATION: Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit a revised site plan, which accurately shows the calculated area to be used for display/storage area for vehicle sales and the customer and employee parking, for approval by the Planning Director. The parking requirement shall be determined once a revised site plan is submitted.
2. The driveways for the sales lot shall be in conformance with the access controls on the recorded plat. Driveway access for Parcel 4 shall remain a joint access with Parcel 5.
3. If this amendment is approved, a revised Carriage House Plaza C.U.P. shall be submitted within 30 days showing the shift of the eastern boundary of Parcel 3 by 35 feet. The description to Parcel 3 shall be revised to show the change in Net Area, Maximum Building Coverage and Floor Area Ratio. The revised C.U.P. shall also show the lot split configuration of Parcel 4 and revised parcel description.
4. If this amendment is approved, the applicant shall submit a lot split reflecting the changes made to the C.U.P. prior to issuance of a building permit.
5. Parcels 4 and 6 permitted uses shall be revised to include outdoor vehicle sales. No outside storage of salvaged vehicles or parts shall be permitted in association with new and used automotive sales, leasing, and service.
6. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-ways.
7. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.
8. Only those signs permitted in the "LC" zoning district and the Carriage House C.U.P. shall be permitted on this site. No temporary display signs are permitted on any parcel developed with auto sales, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
9. Exterior audio systems shall be prohibited.
10. There shall be no elevated platforms for the display of vehicles.
11. The applicant shall comply with all applicable sections of the Landscape Ordinance.
12. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are commercial activities located to the south, east, and west on property zoned "LC" and "GC", as well as an expressway to the south. North of this site are single-family homes on property zoned "SF-6". Northeast of this site are two-family homes zoned "TF-3".
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" and could be developed as a use that is permitted in the C.U.P.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: There should be no adverse affect on nearby properties because of the required screening wall and 80 ft. setback on the site plan. Also, no exterior audio system shall be permitted.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The conformance with the spirit and intent of the Comprehensive Plan was established when the property was rezoned to "LC" in 1998. The development proposed conforms to the development objectives of the Comprehensive Plan, which recommends auto related uses be located along CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities support the uses.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on the community facilities.

VERTS "I will be glad to take questions."

MCKAY "On the fence, you kept showing us pictures of fences..."

VERTS "The masonry wall?"

MCKAY "Yeah, the masonry wall. Along the street it shows a cul-de-sac or a loop on the east portion of this property. You show a 10-foot wall and utility easement. That cul-de-sac has the fence around it too, does it not?"

VERTS "It does."

MCKAY "So there are no real openings in that fence?"

VERTS "No, it is solid."

GAROFALO "Are there any other questions? If there are no other questions, we will hear from the applicant."

EVERETT FETTIS "I am here appearing on behalf of my client, Grant Davis of Davis-Moore. We have also had the assistance of two representatives from Austin-Miller, the experts who assisted in working out the site plan and also to take care of the requirements of the area to pursue this, and we have agreed with the City as to the amendments and to the deals that will need to be made.

I went to a meeting of the CPO group last night on the West Side of the City, as has been mentioned. One of our experts was with me and we listened to and provided the hearing on the situation and as you have been told, the local group voted against us. We tried to listen last night to determine what the basis of this objection was. As I could tell from what I heard, standing and listening to their entire proceedings, there were basically four points that I could tell that they voted on to vote to recommend that this request be denied.

First, it was apparent that they didn't like car dealers. That was mentioned by one or two of the members of the board. They didn't want the car dealers out there. Also, they concluded that there were too many semis, trucks hauling in new cars to this dealership. Incidentally, Grant Davis has made a deal with General Motors and presumably that is what is behind all of this. It would be a Chevrolet agency, a Chevrolet dealership put in there, if this goes through. Also, it became apparent that the third reason they didn't like our application was that they didn't like Home Depot. Home Depot will have nothing to do with this. Grant Davis is buying the property and will put in a Chevrolet dealership if this goes through.

They didn't like Home Depot for several reasons. Number one they have the big building out there that you have seen and they didn't like the exposure on it. One of the members mentioned the fact that they were supposed to put up a wall around the building, which they did do. Also, they are not very happy about the way that has turned out. But that has been done, of course, and we have nothing to do with that, nor does it affect the application as I see it.

One of the people present there raised another question. She said 'I want to know what is in this for me?' I didn't know quite what her question was, but that was asked, and they directed some of these questions to me. I was there, but Mr. Austin was the one who made the presentation to show what the site plan was and what we proposed to put in, and that had been agreed to with the City, or with the staff. Also, they asked me a question at one point. The one that was concerned about all of these semis. They came in and said 'we understand that there will be a lot of these semis in there milling around on the lot often, bringing in new cars. I told him that I didn't have any idea how many times a month semis came in there to bring new cars. I do know they come, but I can't answer how many. I don't think it is any problem. I represent a number of car dealers around town, and they do receive new

cars in on semis, and I have never noticed any evidence that it had created any particular problem or any particular hazard by their trucks.

However, I spoke this morning to the assistant manager at Davis-Moore and asked him if he could answer that. He said that he could. The semis that come in there may bring in a full load or they may bring in half a load and be on their way to somewhere else. He said they seldom knew how long they would be there. He said they would come in as many as two or three semis in a month's period of time, and two months each year when there is a big load coming in. He said that oftentimes they wouldn't have semis delivering new cars to their lot but for two or three months between deliveries.

Davis-Moore has a fairly large operation. They have five new cars that they have franchises for. Also, the assistant manager is here today. I asked him to come up because he can answer some of these questions better than I can. He is present and can answer them. He has stated that he has been with Davis-Moore for some period of time and has told me that in recent times he has had a good many customers that have spoken to him. He happens to live on the West Side himself. He said he has had a large number of customers who live on the west side who have said they wish he would get a franchise or something on the west side so they wouldn't have to go clear across town to get service on their cars and warranty service, warranty work. I am told that that can be fairly significant to people who buy their new cars and they get service on them and various treatment.

They also questioned what kind of problems this would bring into this neighborhood. As you all know, I am sure, that there are a number of fairly substantial dealers in this town and of various makes, and that there is business there. I was asked also about lights and I said that I did know from my own experience that the City maintains a fairly rigid upkeep on the various new car dealers in this town. They regulate the height of our lights on the lots, and also they require that we direct the lighting on the lots of the car lots away from homes in the neighborhood and also restrict the height of the lights. I said I was sorry I couldn't answer that, but there was someone present who did know some of the restrictions and he told them how tall the lights were, basically and what they were directed to. It sounded reasonable to me, and I don't remember the details, but I know that that is basically what was required, and that it is required at all times. Believe me, that is very well policed by the City and for that matter, by the neighbors who are the ones who are interested in seeing that that is done.

Actually, I think I have outlined to you what I heard last night as to the reasons for the objections they made, and I was surprised when I went out there last night. I did not now what to anticipate and I was told when I got there that one of our engineers said he understood that there would be some objection. I had known that there was a good deal of investigation going on and agreeing to the various conditions which were rather luminous as to what we would do to restrict the development, and believe me, the department does watch all of the car dealers in this town as to maintaining their upkeep on lights on their lots and on various other policing activities. I really think that covers just about all of what we encountered last night that I am aware of. I was surprised to find them objecting to us because I think it is not out of the ordinary. I would be happy to try to answer any questions you may have, and I do have our assistant manager here who will be happy to come up and answer any questions that you might have as to the matter of policing these car inventories that was raised last night."

GAROFALO "Everett, this is a new dealership we are talking about here?"

FETTIS "There is Wichita West Chevrolet who has been advertising lately. As a matter of fact, I understand that what happened some time ago, he exercised an option to purchase that Chevrolet agency. General Motors came in and said they had a prior option on that dealership. I don't know whether I am supposed to be telling you this or not, but I know it is true, so I will tell you."

GAROFALO "One other question. It was mentioned here in the CPO minutes that we have here in front of us that a CPO member Paul Clark said that the CUP was last amended in 1998 and auto sales were prohibited at that time. Was there a discussion about that? Do you know anything about that?"

FETTIS "Do you mean at this location?"

GAROFALO "Apparently so."

FETTIS "That was done at the time this place was sold or I think it came in for a zone change, I am sure, when the zone change was made, this was fairly routine because an automobile agency does not necessarily go just with a CUP and unless they are granted, I think it has to meet further standards for that to be included as a use."

GAROFALO "Maybe staff can better answer that question."

KROUT "Maybe one of the applicants, and Tim (Austin) was there at the meeting, could answer this better. It is right that their intent originally was to take care of the Home Depot problem, and I think maybe it was said that there was no intention at that time of an auto car sales lot. Dale, weren't you at the CPO meeting when that situation occurred?"

MILLER "Yes. That all came up in context of Home Depot and whether Home Depot had done what they had promised they were going to do and how that impacted the rest of the site. And part of their argument was that when the Home Depot came through, someone from the neighborhood asked if a car sales lot would ever be part of this, and apparently someone representing Home Depot said that they didn't have any interest in having car dealerships there, that they thought this would be a nursery or something that would be compatible with the Home Depot use.

So the CPO took that to mean that there had been this pledge in 1998 that there wouldn't be any car lots and now they are coming back a year later, asking for a car lot, and they thought they were violating the promise they felt they had. At least that was my interpretation."

OSBORNE-HOWES "I am looking at the drawing, and on the north side I show a 5 foot screening wall. Is that right? I can't read the drawing very well."

FETTIS "I think that is right. That came up last night."

OSBORNE-HOWES "What was the question asked last night, why it was only five feet?"

YEAROUT "Maybe I can help on that. The easement is 5 foot wide, the wall is 8 feet tall."

Johnson returned to the meeting.

OSBORNE-HOWES "Okay. It doesn't look like it says that, but I really can't read it very well."

MCKAY "It says a 5 foot screening wall easement."

YEAROUT "Yeah. It is an 8 foot wall, but the easement is the standard 5 foot, which is normal on CUPs."

JOHNSON "Thank you. How many people in the audience want to speak on this item? Could I see a show of hands? Six, okay. Is there anyone else to speak in favor? Is there anyone here to speak in opposition? Please come forward."

KATHY HEIMERMAN "I live at 431 South Socora in the Floyd Bailey Addition, just west and a little bit north of this."

JOHNSON "Will you point out your place on there?"

HEIMERMAN "It is at the very top. It would be on this edge."

JOHNSON "Okay, thank you."

HEIMERMAN "I have four major concerns about this. One is that when we did go to the CPO meeting about Home Depot, they had to re-code the whole Carriage House Plaza Addition, and some of it was single-family residential, and they indicated, and I think they still own part of the drainage that goes along part of that parcel or something, that is too technical for me, but they did indicate that the rest of the lot would be developed out in neighborhood friendly 9:00 to 5:00 type businesses. They said they didn't want a bunch of traffic around their store, which was going to be so massively huge, and they were really going to work with us to be good corporate neighbors."

My property does not back right up to Home Depot, and although I am not thrilled looking at that orange stripe out my living room picture window, I don't have a lot of the drainage problems or a lot of the wall problems. The wall is 8 foot tall, but by the time that Home Depot elevated their property so they wouldn't have drainage problems, in many places, that wall isn't 8 foot tall when it butts up to the neighbors because they elevated their property. I think there was a lot of mistrust on the part of the neighbors for that.

One of my main concerns is traffic. We all know they are going to re-do Tyler Road. Right now, people are already backed up to that interchange there. People hop off, cut across and then go on the frontage road, cut up Woodchuck and take this frontage road to Tyler so they don't have to sit and wait for the light. I see that getting worse as they work on Tyler. Their main thoroughfare is going to be to go down Woodchuck for Maple, which is to go straight past an elementary school, which is the main thoroughfare through our residential single-family neighborhood. That is a two-lane black top with no curbs and gutter and big ditches. It certainly wasn't made for this kind of traffic.

They say that eventually when the Tyler project goes through, this frontage road will go west only. This is a really inconvenient location. These single-family residences, the majority of them were built in the 1950s with a few of them built in the 1970s. The reason it hasn't developed over the last 25 years is because there are a lot of drainage problems back there. It is not easy to get in and out of, and it backs up to people's homes. That is the reason it is not developed already.

And there are a big group of car dealerships currently on West Kellogg out further west like on Maize and out further. I think they would be better off to go out there where they weren't abutting up to existing housing and they would have better arterial roads to get in and out of their businesses. I also want to know how they are going to keep people from test driving cars through our neighborhood and past our neighborhood elementary school and past our church. We realize that the property will develop, we know that. We can't hold back progress, but we need to protect our neighborhoods, our kids and our neighborhood school from car dealers.

People get into a car to test drive it, and they want to see how fast it goes. They are not familiar with the controls. It is probably the most unsafe drive of the day, the new car that they are not familiar with. Like I said, we do have a lot of flooding and drainage problems back here. We recently, in the last 5 years, we curbed and guttered the Floyd Bailey Addition, with the exception of Woodchuck. For some reason, they did not do Woodchuck. It was not a boundary street and they chose not to do that. But we are paying big bucks for curbs and guttering and a big sewage project that is made worse now by this development. I mean a car lot is 10 acres of asphalt and we already have flooding problems with Home Depot, where are they going to put this. These retention ponds are nothing but a mosquito heaven.

I am worried about the crime also, and the hours of operation, these midnight madness sales going on all night, and vandalism. I read in the paper quite often where the car lots have vehicles stolen, or they come in and all of the windows have been broken out,

or during the night they have had a lot of people in their lot. I am really concerned about, too. Especially with it being right there by the school. I would encourage you to deny this request. We were here just a year ago and they pretty much assured us that this wasn't going to happen, and then we turn around and here we are. Thank you."

PLATT "Could you point out where the elementary school is?"

HEIMERMAN "Yes. Here on the corner of Woodchuck and Maple. This is the only through street to the frontage road."

MCKAY "That was going to be my question, how far away is the grade school. I think it is clear up on Maple, which is quite a ways away, isn't it?"

HEIMERMAN "But it is the only through street from the frontage road."

CRAIG HOGUE "I am the representative from the Site Council for Mary Benton Elementary school. As you had some questions with reference to the school, I thought I could answer those. The Site Council in any school system is defined as the curriculum facility in safety, responsible adults taking care of these children. They consist of the faculty, staff, business community and parents. In our mission to children, we are to provide a safe learning environment. A safe learning environment to us includes going to school from your home and going home as well as the environment inside of the school.

The Carriage House Plaza Addition has been divided into multiple areas (indicating) those red areas. It borders on Woodchuck. It continues to become a smaller and smaller non-developed area as you go to the east, but the usury group that will end up helping with Woodchuck, in the event there is any Woodchuck improvement, that usury group is getting smaller and smaller and smaller. We are concerned that the people leaving the car lot have an opportunity to turn left out of their drive-way, go down Woodchuck and directly on an unimproved road, run in front of a grade school. There are no curbs and gutters, this is a ditched street, non-improved, other than black top, it has no storm sewer system, and you are running these people right in front of a grade school that is unimproved. We are quite concerned about that, and as a Site Council, we feel it is a safety issue and don't want this to be a part of it. Are there any questions?"

JOHNSON "Thank you, sir. Next speaker."

VALERIE WHITE "I live at 516 Topaz. (Indicating) That would be right here. We have the Home Depot wall along the south edge of our home right now. I believe that from the proposal we will have some storage space from the used car lot, which would be directly adjacent to our house. I have a prepared statement.

In the eight years that my family and I have lived at 516 Topaz, there has always been a drainage problem there. Rainfall pools into an area approximately right there, and it did it prior to Home Depot. We all keep coming back to Home Depot. At the time Home Depot presented their proposal, a year ago, my husband and I said that there was a drainage problem. At that time, we were assured that the problem with the drainage would be corrected.

When Home Depot was finished and the wall was built, we were told that Home Depot had done all they intended to do with the drainage problem, so we feel that Home Depot didn't honor their promise and we don't know what will happen with this next development either, so we really don't want to be burned twice.

My second concern is how, of course, being so close to the proposed 10-acre car lot, how my family and I are going to be impacted, specifically with the lights, as far as we know, being on all night long. I feel that the all of the neighbors in the neighborhood from 400 to 500 South Topaz, 400 to 500 South Turquoise, south Floyd and south Woodchuck are all going to be impacted by the lights, whether they are modified or not, and it will end up being our neighborhood that makes a huge adjustment in order to have this new development.

I want to go back to 13 months ago, when the plats of land south of our house were zoned residential, and now, later, we are looking at having a car lot as a neighbor. That is a huge adjustment to make. Just in closing, there are other areas along Kellogg on the south side, farther out west that are not adjacent to residential areas. They should be equally as good of a site as the one near our house. I would just like to ask the Commission to deny this request for this amendment. Thank you for your time."

JOHNSON "Are there any questions? Thank you. Is there anyone else to speak in opposition?"

TONY HEIMERMAN "I live at 431 South Socora. I have two children that go to Mary Benton Elementary. I bought my home about 10 years ago. We went through this with Home Depot and they told us when we had the zoning change, you changed the zoning for them from residential to commercial or whatever it took to get them in, and the reason we had it the way we did is that we didn't want a car lot there. Yeah, he is right. We don't like car lots in our neighborhood. We thought we protected ourselves about it. I didn't think a year later saying that we would be in here saying that we didn't want a car lot in our neighborhood again. I guess that is about all I have to say except that I would appreciate it is you would deny the amendment. Thank you."

JOHNSON "Are there any questions? Thank you. Is there anyone else to speak in opposition?"

JOE HOOVER "I am with the Wichita Public Schools, I handle facility issues for the district. I have been in contact with the principal and with Site Council representatives and both of them are very concerned about increased traffic on Woodchuck when it is not an improved street. There is no gutter and no sidewalks. They are concerned because I guess numerous children do travel up and down Woodchuck to and from school and they are concerned with people test driving cars during those time periods when there would be children up and down that street. Are there any questions?"

FRYE "I don't have a question, it is a statement. I will tell you, even before the vote is taken, it is refreshing to see someone from the school system and from the Site Council taking an interest in this kind of thing and taking a position. It is new, but it is refreshing, and I welcome it. Thank you."

JOHNSON "Is there anyone else to speak in opposition? The applicant has two minutes for rebuttal."

YEAROUT "I will run through these real quick and then the assistant manager would like to have a couple of moments to make some comments. The two things on the development, the drainage issue which has been raised, there was apparently an intent and the original design was to solve all of the drainage in the area. That was not done by the contractor. What has been done to date has been signed off on and accepted by the City as part of the approval, in their Certificate of Occupancy for Home Depot. So, the problems that still exist on-site back in this area will be fixed as a result of this development, whether it is this project or anything else in the future. That is when that is going to get resolved. So the drainage problems that exist or did not get fixed because of Home Depot going in are going to get resolved as part of the approval of the development."

The traffic issue in the neighborhood, any time this property develops for whatever use, it is going to add additional traffic. That is an issue, but not necessarily a detrimental issue to the fact that that is going to be there regardless. The entire traffic pattern in this area will change when Kellogg gets re-established and re-built, and this whole frontage road system goes in. It is important to note, I think, that this will have the location for a car dealership in conformance to the Comprehensive Plan, which does talk about Kellogg frontage, because this will, in essence, be Kellogg's frontage.

The other restrictions in the staff report, we are willing to deal with and agree to. The site plan issues can be resolved. Obviously, we are asking for your approval and support as recommended by staff."

DAWSON GRIMSLEY "I am the General Manager for Davis-Moore. I have worked for them for 23 years. The first thing I want to establish is that we are not Home Depot. Grant Davis has been in the car business in Wichita for 45 years. We exist on the East Side of Wichita with residential areas behind all of our stores. I have a rule for the company that if we get any residential problem, I want to hear about it. I have had one lady call me this year because one of our salesmen takes his customers on test drives, and he was putting the customer in front of her house. She asked me not to do that, and I told her we wouldn't."

JOHNSON "Your time is up."

GRIMSLEY "Can I have just a couple more minutes, please?"

MOTION: That the speaker's time be extended for two minutes.

MICHAELIS moved, **WARREN** seconded the motion, and it carried unanimously.

GRIMSLEY "I will try not to take two minutes. I wanted to address some of the things that they brought up. First of all, our sales people take the customers out of the dealership. They start off driving the car. They take the customers on a route which we can route away from the school. Then when they get to an area, they get out of the car and let the customer drive the car back, to go over the car with them as they test drive."

It was brought up about midnight madness sales. If anybody in this room is familiar with Davis Moore, we do not have midnight madness sales. We close at 9:00 p.m. during the week, we close at 7:00 on Saturdays, and we are not open on Sundays. The lighting issue, the lights that we use shine directly on the lots. We have lights at Kellogg and Edgemoor on our big used car lot, and it is all residential through there, and the same way with our Mazda store, and the same way with all of our stores, our Mercury store, our Oldsmobile store, and all the way down Kellogg. So that wouldn't be a concern.

One of the things that would really be great for the West Side of Wichita is that there is a Chevrolet dealership on the West Side. One-third of the Chevrolets sold in Wichita, Kansas are sold in Cheney, Kansas at Lubber's Chevrolet. People are driving out of Wichita to go to Cheney to buy Chevrolets because they don't want to drive to the East Side of town to buy one. So it would be a convenience and it would also be a service for people on the West Side of town to take care of their cars. That is all I have. Does anybody have any questions?"

WHEELER "As I look at this site plan, if I understand it correctly, there is no access to the streets to the east. The wall will remain where it is, is that correct?"

YEAROUT "Yes."

WHEELER "I guess I just had a question of why the buildings were sited to the back of the property, which puts them closer to residential, but maybe farther up on the site?"

GRIMSLEY "The reason they do that is to have the inventory on the frontage of the lot. The show room is to the back, the inventory to the front. This will also be what Chevy calls their flagship dealership. There are one or two built in the Country right now. It is going to be built to their specs and it is an absolutely gorgeous facility."

WHEELER "Will any of this be paved behind these buildings? I noticed there is an area that is labeled 'storage'. Is that all parking lot?"

YEAROUT "What is labeled will end up being used as storage, either or vehicles or the parking of vehicles. It will be paved."

WHEELER "If this is going to be paved, how are you going to handle the drainage?"

YEAROUT "If you will note, is there a copy of the site plan on a slide?" Okay. If you will note how the line on the CUP takes a sharp peak to the north, and if I can find the sight plan, you will notice that that sharp peak does not show up in here. That is because that is where the drainage structure is and it was designed to accommodate full development of all of this property and will accommodate all of the drainage that occurs in the area so that it does flow to this and is handled in that area.

The idea is that this will be utilized. This shows our revised plan of what was originally submitted as well. There are utility easements that caused a design challenge on this property, as well. But the actual CUP outline comes up and then back down in this fashion. That is the separate tract that Home Depot retained ownership of and is the drainage facility for all of this property and it is their responsibility for maintenance."

FRYE "Is Home Depot selling this property to Davis-Moore?"

YEAROUT "Well, Home Depot is in the chain and Davis-Moore is in the chain. There are other people involved, as well."

FRYE "Okay. Did Home Depot own all of that at one time?"

YEAROUT "It is my understanding that their original acquisition did include part of this property. They are not going to develop the rest of it. Another party, Mr. Boyd bought it and Grant Davis is now going to buy it."

GAROFALO "Mr. Grimsley, most of the concern, a lot of the concern seems to be traffic and running up and down Woodchuck. You said something to the effect that your sales people go with the people who test drive?"

GRIMSLEY "When they begin to test drive a car, the salesman goes with the customer and take them on pre-determined route to show them the amenities on the car, and then when they get to a certain spot, they get out of the car and let the customer drive the car back. It is real simple to instruct the customer to please not drive the car down towards the school. We can't guarantee that they won't, but we can instruct them not to, and then make it a company policy to do that."

YEAROUT "There is a sales representative in the car with them all of the time."

GAROFALO "What if we said that would be a condition of the approval of this?"

FRYE "How are you going to monitor that? I don't think you can."

GAROFALO "I understand that that would be hard to monitor, but..."

GRIMSLEY "There are a lot of things we have to monitor, but one of the things that we do monitor at our new car stores is that the salesmen start the demo ride with the customer."

GAROFALO "I was going to ask you if you would be amenable to making that a condition to keep your people off of Woodchuck?"

GRIMSLEY "Sure we would. Absolutely."

KROUT "I knew that we had, in the western portion of the tract, we had a buffer area of the drainage reserve that was part of the lot. I guess I had thought that wrapped around the whole parcel and didn't stop short of the eastern area. Thinking back at cases like Central and Tyler, where we created more of a buffer between single-family and a car lot because of the nature of the car lot. So, I guess I am a little uncomfortable now that I know that we don't have any kind of a buffer other than the 8 foot wall along that lot to the east. I guess I would ask the agent or applicant whether or not he would agree to establish some kind of landscape buffer that would account for the fact that you don't have a drainage reserve on that side of the property."

YEAROUT "I guess my question would be what, because it is my understanding that that easement right along that property line is where the wall is, and it is in place."

KROUT "I am taking about to the north."

YEAROUT "There is a wall there as well, right along the property line."

KROUT "Right. But we have usually tried to create a wall and a buffer by distance between car lots and the backs of single-family residences, and over on the western portion we do have that in terms of the drainage reserve.

I don't remember the details. There may be somewhat of a buffer on the east side, but I know that we had a 100 foot buffer at Central and Tyler when that was approved, and then when we had a case at 143rd and Kellogg out east once, we had a similar buffer that was being offered as part of that. So, can you explain what you do have along there?"

YEAROUT "I didn't handle the case when it went through as Home Depot, but as I recall the plat, along this property line, as I said the drainage area sits in here. There is a wall easement, but there was a 10-foot reserve that was platted as part of the re-plat of this subdivision. Those were, just like the larger reserves behind Home Depot, deeded and granted to the adjoining lot owners. At least in this area, it is my understanding that those 10-foot reserves are side yards and not rear yards of the home that adjoin in there. There is a street coming in here and the homes face this way, and then this street, Topaz, comes in and they face back this way. There is already an additional 10-foot strip that has been reserved in the plat and then granted or conveyed to those adjoining land-owners."

KROUT "I guess I am saying that when we have dealt with car lots, we have tried to do a little bit differently and there is that one location, whether it is a rear yard or a side yard, I am not sure that...."

YEAROUT "Are you talking about right here, Marvin (indicating)?"

KROUT "No. Right there. To that street. Up to that street. But beyond that to the west, there is a drainage reserve, I understand that. There is a buffer there."

YEAROUT "You are talking this area right in here. That 10-foot strip was created as part of the re-plat."

KROUT "I guess I am asking you whether or not you can stop the paving of the storage area something short of that wall and 10-foot strip to create a wider buffer in that particular situation."

Hentzen left the meeting at 5:05 p.m.

WARREN "That area would be hidden from the residents with the wall."

KROUT "Well, it is a question of the activity, though, and how close it is to the residential property."

YEAROUT "We can take a look at it. We are dealing here with an 8-foot wall rather than a 6-foot wall. I think that extra couple of feet does make a difference. There is the 10-foot reserve that those landowners now have, if you are talking just maybe setting back a little of different additional space. We could take a look at it in design and see what works. I guess I don't know what we would gain."

MCKAY "Following along with what Marvin is saying, Topaz Street, I think it is, comes in to the north end of that where the jog is, and then there is that one triangle lot. Even though you give them 10 feet and an 8-foot wall, I understand that the 10 feet you gave the property owners on the north, where I think Marvin is coming from is that even though you put a fence there that the buffer for just noise or normal use could be maybe putting in a couple rows of trees with another 20-foot easement, and not pave it, but go clear up to it."

YEAROUT "Are you saying 20 feet off the inside?"

MCKAY "Go from your fence 20 feet in or 30 feet and put a couple of rows of evergreens or trees to buffer it. This is going to be 'star place' and it could really look nice."

GRIMSLEY "If we can work that into the deal, we would do that, yeah."

MCKAY "What I am saying is that you don't have to put paving clear back to the yard, so you've got 20 or 30 foot of landscaping in there on that whole north side that abuts residential."

GRIMSLEY "Like pine trees, or.."

WHEELER "I don't know if Marvin or staff would recall, but we had a situation, I think it was behind the Scholfield Imports store out on East Kellogg where we had residential on the back side. I don't know if it was a repair shop or an actual car dealership, and we had residential to the north. There was actually a street separating it. Do you recall the set back? We required a landscape buffer."

KROUT "It was across the street, but I think it was a 20-foot landscape."

MCKAY "That is all I am saying is to put up something that will grow and get up. That fence is never going to get any higher than 8 feet. And it would also kill some of the noise."

OSBORNE-HOWES "I was just going to comment that there are plenty of precedents for this, even at Davis-Moore, if I remember correctly, where we have talked about that. And I think we have also done that with lighting as well, so that you wouldn't have your typical lights back there. You would have more residential lighting, you know, the height and the intensity of it. I sure would like to see that in anything that abuts single-family."

And then I had also asked Marvin, I don't know if it was MAPC or BZA, or whatever, but somewhere out on West Kellogg, close to the Cowskin, we approved, or the BZA approved, a vacant lot to be a car lot and the neighbors were very concerned with it initially because they would look into it. There were a number of restrictions that were proposed."

KROUT "Dale is trying to review that. This is a case that was in 1995, Susan. Time flies. I think there was a requirement to put, there was an existing berm or levee and they actually put a wall on top of that, so they did a special job in terms of screening, and I think that that was the key issue.

I think, in this case, that having a little more buffer and having a requirement for some evergreen trees around the perimeter of both of these parcels, would go a long way to solve the problem for the most immediate neighbors."

JOHNSON "Are there any other questions? Thank you. What is the pleasure of the Commission?"

MCKAY "That street is dead-end, isn't it?"

KROUT "Beyond that street, further to the west, there is already a buffer.

MCKAY "Yes, there is a buffer right in here. So it would put a buffer here, and that is even including landscaping this little jet thing that goes back up around these folks house."

KROUT "And does the landscaping extend also along the whole north end of the property? Or are we just talking about in there?"

MCKAY "I thought you said there was already stuff here."

KROUT "Well, there is a drainage reserve, but I don't know that we have any landscaping that is planted."

MCKAY "And to take that one step further, I think that the landscape design needs to be approved by the City prior to this."

KROUT "City Planning?"

MCKAY "I am just talking about somebody approving the landscaping. What I am looking at are some trees that in two or three years are going to be 10 to 12 feet tall, but the sound barrier is what I am looking at as much as anything."

KROUT "I think we understand the intent and I think you can say that the Planning Department will have to approve the landscaping."

MCKAY "Okay. The Planning Department will have to okay the landscaping."

OSBORNE-HOWES "Will you also add the lighting."

MCKAY "I think the lighting is already part of the deal, is it not?"

KROUT "Well, we don't have a limitation on height other than the standard requirement, and that would mean that, let's say, if you were 80 feet away, you could have a light that was 25 or 26 feet tall."

OSBORNE-HOWES "I just wanted to make some stipulations making the lights lower."

MCKAY "Susan, what we have done in the past is to have lights that shine directly down and away from the residential. So if you are 10 feet behind it, you might get a little bit of the illumination, but you won't get direct light."

KROUT "That is already in the Code."

VERTS "Within the CUP, there are some stipulations on this particular parcel. Correct me if I am wrong, but I believe that it is within 200 feet of the residential area that they need to be no taller than 20 feet and forward of that, they can be 40 feet, and they are not to be directed towards residential, but towards the lot."

OSBORNE-HOWES "If there were lights back there, that is close enough that even 20 feet is a little high. I remember on Davis-Moore out east we talked about 12 or 15 feet."

KROUT "I would say that 15 or 16 feet we have had sometimes, close to residential, yes."

OSBORNE-HOWES "John, will you say 15 or 16 feet?"

MCKAY "Sure.

GAROFALO "John, since you are making the motion, are we so inclined to be agreeable to put in the restriction that they stay off of Woodchuck Street?"

MCKAY "I am not going to put that in the motion. I don't think there is any way in the world that you could ever police it. The only thing you might say is that right turns only out of that. The gentleman has already said that if there were a bunch of complaints filed, they would work on them."

GAROFALO "But apparently, Home Depot said a lot of things, too, according to the neighbors. Okay."

MCKAY "I need to follow up on this with Marvin. There is only one little strip area there that is the piece coming back down. You were talking about putting landscaping in there also, Marvin?"

KROUT "Yes."

MCKAY "Okay. I think that would be all right."

WHEELER "Well, does that include then...I don't understand exactly where the drainage is. The drainage is to the west of the parcel outlined in red? Will it tie into that, or does it actually sit within the area?"

VERTS "Right now, the drainage basin that they have is right here. The site plan that you have kind of cuts off this portion right here."

KROUT "So we are just saying that there ought to be some trees planted around the edge of that drainage basin."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There are commercial activities located to the south, east, and west on property zoned "LC" and "GC", as well as an expressway to the south. North of this site are single-family homes on property zoned "SF-6". Northeast of this site are two-family homes zoned "TF-3". The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" and could be developed as a use that is permitted in the C.U.P. Extent to which removal of the restrictions will detrimentally affect nearby property: There should be no adverse affect on nearby properties because of the required screening wall and 80 ft. setback on the site plan. Also, no exterior audio system shall be permitted. Conformance of the requested change to adopted or recognized Plans/Policies: The conformance with the spirit and intent of the Comprehensive Plan was established when the property was rezoned to "LC" in 1998. The development proposed conforms to the development objectives of the Comprehensive Plan, which recommends auto related uses be located along CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities an support the uses. Impact of the proposed development on community facilities: The use of this property should have limited impact on the community facilities). I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall submit a revised site plan, which accurately shows the calculated area to be used for display/storage area for vehicle sales and the customer and employee parking, for approval by the Planning Director. The parking requirement shall be determined once a revised site plan is submitted.
2. The driveways for the sales lot shall be in conformance with the access controls on the recorded plat. Driveway access for Parcel 4 shall remain a joint access with Parcel 5.
3. If this amendment is approved, a revised Carriage House Plaza C.U.P. shall be submitted within 30 days showing the shift of the eastern boundary of Parcel 3 by 35 feet. The description to Parcel 3 shall be revised to show the change in Net Area, Maximum Building Coverage and Floor Area Ratio. The revised C.U.P. shall also show the lot split configuration of Parcel 4 and revised parcel description.
4. If this amendment is approved, the applicant shall submit a lot split reflecting the changes made to the C.U.P. prior to issuance of a building permit.
5. Parcels 4 and 6 permitted uses shall be revised to include outdoor vehicle sales. No outside storage of salvaged vehicles or parts shall be permitted in association with new and used automotive sales, leasing, and service
6. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-ways
7. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be done on the premises without first obtaining "GC" General Commercial zoning.
8. Only those signs permitted in the "LC" zoning district and the Carriage House C.U.P. shall be permitted on this site. No temporary display signs are permitted on any parcel developed with auto sales, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted.

However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.

9. Exterior audio systems shall be prohibited.
10. There shall be no elevated platforms for the display of vehicles.
11. The applicant shall comply with all applicable sections of the Landscape Ordinance.
12. All parking light poles in Parcels 4 and 6 shall be of the same color and design as Parcel 3 and shall have cut-off fixtures, which direct light away from nearby residential areas. Light poles on Parcels 4 and 6 shall be limited to a maximum height of 40 feet except those within 200 feet of any residential area, which shall be limited to 15 feet in height.
13. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this amendment by the Governing Body, or the request shall be considered denied and closed.

MCKAY moved, **OSBORNE-HOWES** seconded the motion.

OSBORNE-HOWES "Just one quick comment. Because of the very fact that we have had someone from the Wichita Public School System and we have a number of concerns from the neighborhood, and I don't want to pooh-pooh the idea of them test driving on Woodchuck, I really do think that Davis Moore needs to make a commitment to follow through with what they said they were going to offer. That Saturn dealership out west has also said something about that, and yet I know personally that the sales people get in the car and let whoever is driving go wherever they want. So I am just asking that that be a commitment to the neighborhood."

GRIMSLEY (From the audience) "We have a Policy and Procedure manual and we can put that in the manual."

JOHNSON "Is there any other discussion? I will call for the vote."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

KROUT "As an amendment to the CUP, this is a final action, unless someone within 200 feet if the area files a protest. Then it will go to the City Council.

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6. **Case No. CU-522** – James Spexarth (Owner); Turner Communications, Inc. c/o Denney Workman (Lessee) and PEC c/o Rob Hartman (Agent) request a Conditional Use permit to allow a communication tower on property described as:

The North Half of the Southeast Quarter of Section 10, Township 26, Range 2 West, Sedgwick County, Kansas. Generally located west of 151st Street West and ½ mile north of 61st Street North.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use to permit a communication tower on an 80 acre unplatted tract located west of 151st Street West and ½ mile north of 61st Street North. This tower would serve a newly created TV station, which has FCC approval to serve the Wichita market. The lessee of this property has submitted a site plan, which shows an 1100-foot broadcast tower in the middle of this 80-acre tract. The tower would be served by an 800-foot long access road from 151st Street West with a 30 by 40-foot transmitter building located near this tower. This building would house the equipment for the tower. Additional buildings would probably have to be built, if additional users located on this tower.

The Unified Zoning Code permits communication towers in the "RR® Rural Residential district through a Conditional Use permit. However, the Zoning Code also requires the applicant to provide the following information before a building permit can be issued, and it is appropriate for these issues to be addressed as part of the Conditional Use application:

- (1) there is no available space on existing or approved towers or other structures, which can be utilized to meet the applicants communication needs;
- (2) there is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) the owner of the tower shall agree in writing at the time of the issuance of a building permit the following;

- (a) that the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
- (b) the owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

There are single homes located to the east, north and south on property zoned "RR" Rural Residential. The home to the north is 2,100 feet away from the tower while the home to the south is 1,800 feet south of the tower. The home east of 151st Street West is 1,300 feet east of the tower. West of the property is agricultural land and a communication tower to the southwest of the application area. This area is also zoned "RR" Rural Residential. There are another four broadcast/communication towers located approximately 1 to 1 ½ miles south of the application area.

CASE HISTORY: None

ADJACENT ZONING AND LAND USE:

NORTH: "RR" Agricultural land and single family home
SOUTH: "RR" Agricultural land and single family home
EAST: "RR" Agricultural land and single family home
WEST: "RR" Agricultural land and communication tower

PUBLIC SERVICES: This property has access to 151st Street West, a two-lane County highway, with current traffic volumes on this roadway of 1,267. The 2020 Transportation Plan estimates that the volumes on this roadway will be 1,110. No improvements along this roadway are projected by the Sedgwick County Capital Improvement Program in the next seven years.

There are no municipal services available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

The Transportation/Utilities Locational Guidelines of the Comprehensive Plan also recommends that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. Adopted policy in the treatment of communication towers is clearly established in the zoning code, which is stated in the background section.

RECOMMENDATION: The applicant has sufficiently addressed the criteria established in the Unified Zoning Code as explained in the consultant's report, therefore staff is recommending the request be approved, subject to the following conditions:

- A. The tower shall be located 150 to 200 feet south of the location as indicated on the site plan to provide additional separation from the tower to the residential home across 151st Street West. The tower shall be no taller than 1100 feet tall.
- B. The tower shall be fenced with chain link fence, which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
- C. The applicant shall meet all conditions of Section III-D.6.g of the Unified Zoning Code.
- D. This proposed broadcast tower shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

This recommendation is based on the following findings:

- 1. The zoning, uses and character of the neighborhood: There is agricultural land located to the north, south and west of the application area, with a single family home located farther to the north and to the south. East of the application area is a single-family residence located almost directly across from the communication tower. All of the property abutting this development is zoned "RR" Rural Residential. There are four towers located about 1 to 1 and ½ miles south of the application area.
- 2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "RR" which only permits a communication tower through a Conditional Use request in this zoning classification. The application area could continue to be used as agricultural land or other uses permitted in the "RR" Rural Residential district.
- 3. Extent to which removal of the restrictions will detrimentally affect nearby property: The tower is located across the street from a single-family home. Staff believes that this development of a 1100 foot tower with a 30 foot by 40 foot

building will impact this residential home since they will be able to see it from their front door and yard with no screening or buffering provided. The area to the south and west is all owned by the applicant or his family.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses.

The Unified Zoning Code does establish local policy aimed at minimizing the building of new communication towers as explained in the background section of this report. Based on the report provided by staff's consultant, there are several other towers in the area, which have not been examined sufficiently by the applicant, which could meet the applicant's needs. Therefore, this application does not meet the intent of the policy.

5. Impact of the proposed development on community facilities: This request will generate additional traffic in the area but should not be significant. Sedgwick County Code Enforcement has stated that no on-site services will be required.

GOOCH "We did have our consultants study this and there are two reports attached. One says that we should deny this; that was the earliest one. The most recent one says that we should recommend approval of the request. Item A should be revised to state that the tower shall be located 150 to 200 feet south of the location, or on the west side of the KG&E utility easement. We are recommending that this tower actually be moved south behind the applicant's house or on the west side of the KG&E utility easement. This would provide for more separation of a Mr. Lindebur's property, which is located right here (indicating). Mr. Lindebur's attorney is here today and he will also speak on this. Are there any questions of staff?"

WARREN "Where would the location of the tower be that you are recommending?"

GOOCH "We would recommend either it be either here or here (indicating). It is an 1100-foot tower. That wouldn't change the consultant's report anyway. Colwich did hear this request in June and approved it unanimously."

JOHNSON "Are there any other questions of staff? Applicant or agent."

BOB KAPLAN "I am at 430 North Market. It is my privilege today, Commissioners to have the honor of representing what I hope is Wichita's newest free TV channel, Channel No. 33. I want to introduce to you today, the people I have here, so that if you have questions regarding either the technology or regarding this application in any fashion, we have brought in all of the people that we believe are going to be necessary to answer any questions you may have regarding the technology or this application.

Channel 33 will be a Warner Broadcasting Affiliate. Warner Brothers, as you probably know, is a subsidiary of Time-Warner, the entertainment people, and I have a representative from Warner Broadcasting, Harold Prodder here. He can answer questions regarding any programming you may have. It is a family format. If you have specifics about what they are going to air, Mr. Prodder is here from Time-Warner to answer those questions.

I have Mrs. Marcia Turner here. She is formerly of Parsons, Kansas. She is an elementary school teacher from the City of Wichita, and now offices out of Las Vegas, Nevada and has had the good fortune to have found a communications company called Turner Communications, not the one you are thinking about, but a very nice one. When they called me, I asked to speak to Jane and they didn't see the humor.

Mrs. Turner is here. We have our FCC license. We have our FCC approval. Our existence is authorized, we have our FAA approval for our license, we have our contract with Warner Brothers, and we basically have all of the parts in place; all of the pieces in place with the single exception of your approval of a Conditional Use. I also have here Rob Hartman, who is the local engineer from PEC, I have Denny Workman here, another employee of Turner Communications, and finally I have Mr. Mel Lieberman, who flew in from Silver Springs, Maryland, here.

Mr. Lieberman is an engineer specializing in broadcast tower communications. So if you have any need to ask any questions technical or otherwise, I have someone here that can respond and has some expertise. We have spent, ladies and gentlemen, about the last four or five hours trying to reach accommodation. We have one gentleman here, at least one, who is the neighbor to the east, Don Linnebar, a nice gentleman, with whom I have had several meetings. He has counsel here, Mr. Stewart Kowalski, here to represent him. We have spent untold hours in trying to bring accommodation to a specific site so that we could be site specific. I have been running out of the room, we have had meetings, we have been on the telephone, Mr. Powell is here representing the applicant you are going to hear in a couple of weeks, and I think Mr. Ferris is consulting with Mr. Powell's client. I will let Mr. Powell and Mr. Ferris take care of their applicant, and I will try to take care of mine. They can take care of their problem in two weeks.

We have had a couple of deferrals on this. I am going to tell you up front that another deferral we can't handle. We have an August 11 commitment date on our FCC approval. We are either in business by the 11th, or we are out of business. We did set up, and we are setting up downtown at the old Holiday Inn, kind of an emergency antenna system, which isn't going to be very effective, but according to the engineer, at least it is going to demonstrate to the FCC, if we stub our toe somewhere along the line that we are acting in good faith, and that this is a reality, not a fiction. We are going to build a tower and we are going to broadcast Channel 33.

The real issue we have here is not really a land-use issue per se; it is not a needs issue. We have met Commissioner Garofalo and worked quite some time with the Florida consultant, and with Mr. Lieberman in Maryland, and we have met the needs issue and the

needs test has been met. That is the reason that staff is recommending approval. It has never essentially been entirely a land-use issue. The Code does demonstrate that you have to prove the need to construct a new tower and we have tried with every affiliate here and every tower here. We have to build our own tower, there is just simply no other way to do it, and I think the experts are agreed on that at this point.

I want to save a couple of minutes. I want you to meet Mrs. Turner because Mrs. Turner is a very articulate lady. She verbalizes very well, and you are going to enjoy her. You are really going to enjoy listening to her. She is a great lady and I am just happy to have the privilege of representing her. The real issue, what this case comes down to, and we are unable to communicate effectively, I think, Mr. Powell has his assignment and there is not much he can do but represent his client. I am unable to really get the information I need to try to coordinate locations. Here is what I want, in addition to the Conditional Use approval, obviously. The application area is on the 80 acres.

I want approval for a Conditional Use somewhere on that site. That is what I would like. If I can't have that, and if you have to be site specific, then give me as much flexibility as you can in locating it on the site and then I will have to make it work. We will have to work within the parameters of our lease; Mr. Powell has some questions about his lease, but I would like flexibility in locating the tower to the extent you will give me. My real rather would be to approve a Conditional Use on the 80 acres. The drawing that you are going to see is not the drawing that was presented by Mr. Gooch. This is Mr. Spexarth's first location. This is where he would like to have it, but I don't think that we can resolve, and I am not expecting you to resolve any of the issues between Mr. Lindebur and my client, and Mr. Spexarth. I don't think you can do that. I think there may be some legal issues that are not relevant to this hearing. They are certainly going to be relevant to me at a later date.

If you are going to approve my Conditional Use, which perhaps I ought not to assume, but it is a very, very meritorious case, I would like to have as much flexibility as you will afford me. That is within your discretion and then I will work within that flexibility. Mrs. Turner, I left you two minutes."

MARCIA TURNER "I am the President of Turner Communications, Inc. I was born in Parsons, Kansas and taught elementary school here for nine years. I want to bring something back to this community. Things I couldn't do through teaching. One of the things is the services that we provide, as you know, different television stations. The thing that I really want to bring home to you, this is something free that I am bringing to the community. I have been sitting here for hours, like you guys, listening to all of these different people, and I don't know how many of them are bringing something free to the community. You know this is going on the cable as well, but SEC said that the Wichita area needs and deserves another television in the market and it needs to be accessible to people for free. So it is just the same power as a NBC, a CBS, an ABC or FOX. That is what Warner Brothers is. That is all I would like to say."

KAPLAN "Do you want to hear from any of our experts or consultants at this time, or do you prefer they just respond to questions? They are available if you want to hear from them. I was just going to have them respond to questions. If I have 49 seconds, Mr. Prodder, would you tell us a little bit about Time-Warner? Can you do that in half a minute?"

PRODDER "Yes. If you ask why do you need another television station, which is a legitimate question. We serve a certain segment of the market. Our target is families. People with either a child or a teenager in the household; a female age 12 to 34, and we are in a very narrow range trying to be very special to that smaller audience as against trying to be all things to all people. That has made us very successful in other cities and it is very much of a family concept. The programming like 'Seventh Heaven', which is about a priest, his wife and four children, and they just had twins and stuff like that. Bugs Bunny, Michigan J. Frogg and stuff like that."

GAROFALO "It had better not be a priest."

FRYE "We must be talking about a different kind of priest. Priests are not supposed to do that."

PRODDER "A minister!"

GAROFALO "Okay then."

JOHNSON "Are there any questions?"

MARNELL "I need to disclose that I will be having business arrangements with Ms. Turner because of the nature of the business I am involved in, and Mr. Powell and Mr. Ferris has talked to me about what their applicant has in mind."

JOHNSON "Is there anyone else here to speak in favor of this item? Is there anyone to speak in opposition? Please come forward."

GREGG FERRIS "Thank you, Mr. Chair. I represent Broadcast Tower Leasing, and you will be hearing their proposal in two weeks. I am not here to be for or against the proposal today, but to ask a couple of things.

First of all, these kinds of towers are significantly different from the towers that you have all been hearing, and I want you to be aware of that and treat those differently. The reason we want that is because we are not opposed to their tower because we think a couple of towers may and could very well be necessary, but if you are inclined in your mind to have a pre-disposition against multiple towers, this is the Colwich Tower Farm. That is what it is called out there because that is the area in which there are a lot of towers. But if you have a pre-disposition against multiple towers, we would ask you to defer this until such

time as you would hear our client's case and then weigh the merits of each one.

If you do not have that pre-disposition, and believe that you will be able to look at the merits of the case in and of themselves in two weeks, then we have no opposition whatsoever to the request that is before you today. I would be glad to answer any questions that you might have."

JOHNSON "Are there any questions? Thank you. Is there anyone else to speak in opposition?"

STUART KOWALSKI "I am here on behalf of Don Lindebar. Don lives across 151st Street, and I think in order to show you what I would like to show you, it would be helpful to have a different map up on the screen.

It looks like just a lot of lines, but I think you probably have a copy of this in the staff report. What we would like to do, running north/south, basically bisecting this 80-acre section is a KG&E easement that goes on south to the KG&E generating plant. What we would like to see and do is consistent with what staff has in mind. We would like to see them move this tower away from the road, away from 151st Street on to the west, which keeps it on the applicant's land, onto the west of the KG&E easement. So what we are asking is for them to basically move the tower away from 151st Street, approximately 900 feet on to the west. So we are not particularly opposed to the tower being there, we just want the tower away from 151st Street.

What we are concerned with is that these towers have been here a long time. I think the first tower was built out there in the 1950s. I don't think there has been a tower built in the last 20 years there. I think the KDFI tower is about 20 years old or somewhere in there. I am not sure anybody has really looked at some of the safety issues and concerns that are experienced by the people that actually live with these towers and live in the area. The concerns have been expressed to me by my client and by some of his neighbors.

Some of the problems are ice freezing up on the guy wires in the winter, and then as that ice will start to melt, it will actually peel off of the guy wire. Depending upon the direction of the wind and the strength of the wind, it can actually be blown into an incoming car. As a matter of fact, my client, Mr. Lindebar's daughter-in-law's car was struck by one of these falling pieces of ice. They are coming from a high distance, and are, generally speaking, shaped like a spear. They are not round balls; they are shaped much like a guy wire. So it can cause some problems. We are also concerned about the tower itself. Mr. Client, Mr. Lindebar can tell you, and the experts will tell you that these towers are designed that if they ever fall down, and I don't think it happens very often, but they are designed to implode. He can tell you that he has seen the KDFI tower, which there is an existing tower on this section of land over in the left-hand corner that the top came off of that particular tower and actually slid down the guy wire. That is one of the concerns that we have about the guy wire being so close to Mr. Spexarth's house.

I am told that they are going to rotate those guy wires, but when they do that, that is going to move them not 800 foot from 151st Street, but more like 700 foot. So their suggestion isn't to put it 800 foot away, they want to move it even closer to the street. They have all of that land out there and we think they need to move it back away from the 151st Street. We are seeing urban sprawl, this 5 acre lot thing that I know the Planning Commission has been wringing their hands over for the last couple of years."

KROUT "That is the Planning Department. The Planning Commission hasn't done much hand-wringing."

KOWALSKI "I saw Mr. Krout's reaction when I mentioned 5-acre lots. I live in West Wichita and we all know what is going on out there. It is just a matter of time before 151st Street becomes 119th Street, or Maize Road. It may be a few years down the road, but I am not sure that the staff has evaluated this. Maybe they have and that is the reason for their recommendation that they move this tower on to the west. Maybe they really have considered that we need to keep these things away from the traffic. We need to move them back into the section and away from the streets. That is all we are asking for. It is a pretty simple, straightforward deal.

I do have with me today, a petition from 29 of the people that live in this area. It is 29 or 30, there were a couple more that signed it today. What the petition says is that we the undersigned propose that the communication towers be set back from existing roads and residences at least 1 to 1-1/2 times their height on account of falling ice, wind noise, and I forget to mention wind noise. These things actually do have a whistle to them. We have one of the people who signed our petition who has complained that he can hear the whistling from some of the towers inside his home. The noise and devaluation of furnished property.

So, this is a concern of not just Mr. Lindebar, who lives across the street, but also of 30 other people who live in that area. You've got to figure that there are not a lot of people who live on a square mile out there, so these are all of the people who live with these towers on a day-to-day basis and have been living with them for years and years. Thank you for your time. I would be happy to answer any questions."

WARREN "As I understand, the applicant is on the north 80 of this Section 10 of the Southeast Quarter?"

KOWALSKI "I think the application covers the entire 80 acres."

WARREN "Yeah. And you are suggesting that he be on the west 40 of that 80?"

KOWALSKI "That's correct. What we would like to see you do is to condition approval of his application on his constructing the tower on the west 40."

MARNELL "Will you point out your client's residence on this map?"

KOWALSKI "Yes, sir, I would be happy to. This is 151st Street here; it runs north and south. This is my client's residence right across the street. From the proposal location, we are 1225 feet away right now. Now we are told that what they want to do is rotate this, which means they are going to have to move the tower another 100 foot or so closer, which would put us about 1125 feet away from an 1100 foot tower. It makes us a little nervous. We would prefer to see them over in this great big open area where there are no roads, no homes, just wheat fields. That is a perfect location for it. We think that is a much better option for everybody, especially on down the road as we continue to see urban sprawl move west."

OSBORNE-HOWES "You may not know the answer to this, but are there any other homes or is there any other land owner that would be affected by the movement that way?"

KOWALSKI "No ma'am. I was out at that property before. There are some other homes in the area. There is a home that sits up here (indicating) a quarter mile. I believe there are some more houses up here, but I think that Mr. Spexarth's brother lives here. I think they are the only houses affected."

GOOCH "The Spexarths actually own, or somebody in the family, the entire half section."

MICHAELIS "I don't know if this question is for you or Mr. Ferris, but are there more existing towers on this section now, or on different parts of it, other than that one? Is that the only one other one now in this area?"

GOOCH "And the proposed one."

JOHNSON "Are there any other questions? Thank you very much. Is there anyone else to speak in opposition to this? Seeing none, the applicant has two minutes for rebuttal."

KAPLAN "Two minutes is tough. What I am going to ask you to do is to take a few minutes and work with the engineer to kind of locate this thing. I can't stand this board up on anything, but it shows you all of the towers. Are there four or five existing towers? Four? There are four existing, what we call tall towers in the area."

The noise that Stu is referring to, if you stand out there, there is a large KG&E power plant immediately south of the site. When you stand out there, you can hear the hum off of the transformers. I have been out there. I don't know about wind noise. What you hear is a loud hum that is coming off the KG&E transformers. I don't have any time left. Can you, Rob, either you or Mel, whoever wants to do it, talk about dimensions and see if we can help approximate a location if we have to be site specific? Mel, do you want to do that? You have a minute. I want you to talk about appropriate sites."

MELVIN LIEBERMAN "I am the President of Lieberman and Walesko, we are consulting communications engineers. To answer the question about the tower and its specific location, in an effort to accommodate the landlord, we have rotated the tower from the picture there about 10 degrees counter-clockwise. I did some fast calculations as Mr. Kowalski was speaking, and it turns out that we would be closer to about 75 feet, not 100 or so feet, closer to the street."

There are certain limitations that we have with respect to where we place a tower, paramount of which is the question of safety in constructing the tower and how close KG&E will allow us to get to their right-of-way. I think my time is up."

OSBORNE-HOWES "So since some people brought up the subject about moving to the west, where are you with that?"

LIEBERMAN "Technically, it could be done."

OSBORNE-HOWES "Okay."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There is agricultural land located to the north, south and west of the application area, with a single family home located farther to the north and to the south. East of the application area is a single-family residence located almost directly across from the communication tower. All of the property abutting this development is zoned "RR" Rural Residential. There are four towers located about 1 to 1 and ½ miles south of the application area. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "RR" which only permits a communication tower through a Conditional Use request in this zoning classification. The application area could continue to be used as agricultural land or other uses permitted in the "RR" Rural Residential district. Extent to which removal of the restrictions will detrimentally affect nearby property: The tower is located across the street from a single-family home. Staff believes that this development of a 1100 foot tower with a 30 foot by 40 foot building will impact this residential home since they will be able to see it from their front door and yard with no screening or buffering provided. The area to the south and west is all owned by the applicant or his family. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Land Use map of the Comprehensive Plan identifies this area as appropriate for "agricultural" use. This category has the intent of protecting agricultural resources and is meant to accommodate agricultural operations on substantial acreage. This category can allow other uses common in rural areas, which are no more offensive than normal agricultural uses. The Unified Zoning Code does establish local

policy aimed at minimizing the building of new communication towers as explained in the background section of this report. Based on the report provided by staff's consultant, there are several other towers in the area, which have not been examined sufficiently by the applicant, which could meet the applicant's needs. Therefore, this application does not meet the intent of the policy. Impact of the proposed development on community facilities: This request will generate additional traffic in the area but should not be significant. Sedgwick County Code Enforcement has stated that no on-site services will be required.) I move that we recommend to the governing body that the request be approved, subject to the following:

- E. The tower shall be located on the west 40 acres of the application area and shall be no taller than 1100 feet tall.
- F. The tower shall be fenced with chain link fence, which has a minimum height of 6 feet with an additional 3 strands of barbed wire extended above the chain link fence.
- G. The applicant shall meet all conditions of Section III-D.6.g of the Unified Zoning Code.
- H. This proposed broadcast tower shall be in compliance with all conditions approval by the MAPC, and/or the Governing Body, as specified above, or this Conditional Use shall be considered null and void.

WARREN moved, **GAROFALO** seconded the motion.

OSBORNE-HOWES "Will this, in any way, affect what the City and County are talking about doing, the communication towers? Is this different?"

KROUT "Well, this is a very different type of tower. The one you will see two weeks from now is also. But this is a tower. The City is contemplating a moratorium on new towers. The County, as far as I know, is not contemplating that. There is some general concern, and there are some general principles in the current policy about proliferation of towers. I don't want to get into the next case, but I guess we will talk about that in a couple of weeks."

OSBORNE-HOWES "It really is proliferating out there."

KROUT "There has been a proliferation for a while."

MICHAELIS "I have a comment. It looks to me like if this tower was rotated, and the way I understood it, it would come in 75 feet, that the actual guy wires would be much further away from the road than that 260 feet. And if you look at that map that Ms. Turner brought around, every one of those other towers are very close to roads. I guess if you want to have some consistency, and if those aren't a problem after being there for 20 years, I don't know why this one would cause a problem."

OSBORNE-HOWES "It just seems to me that my thought, when he said that is that I think we are a lot more concerned about a variety of issues today than we were 20 years ago."

KROUT "We were expecting that the County wants to participate in the study that is coming up, and I think that some of the questions that you hear raised on a regular basis, dealing with safety, and what happens when a tower falls down and ice and those kinds of things are questions that we will have and that you will have of the consultant, once he is on board."

MARNELL "I have some experience in this area, and also a knowledge of things that are going on within the whole television industry and you should be aware that there is not just going to be one or two new towers built in the area. It has to do with what the Federal Government is requiring that the television system in the United States in conversion to digital transmissions. They tend to be, because of existing physical structures, they tend to be incompatible as far as putting two antennas of the size, weight and magnitude that television-transmitting antennas are, so they require new structures. So the chances are that in some area within the proximity of Wichita, there will be multiple towers or some kind of tower facilities built. In regard to this site, it is specific in this area, it is an antenna farm, and I can't see an objection in the generalized area."

With regard to the safety, both on the towers collapsing and ice off the guy wires, it is a problem. Certainly there would probably be exceptions, but in all of the years I have been around communications, some 35 years, I have never seen ice exceed the outer limits of the guy wires. Even though it is falling from above, gravity tends to pull things down pretty fast. I can also tell you that our towers have fallen, and furthermore I have never seen a tower reach its own length when it falls. They collapse because of the guy wires, so I don't see that as a safety issue for anyone."

JOHNSON "Is there any other discussion?"

KAPLAN "I appreciate that there is a motion on the floor, but I would beg the indulgence of the Commission for one very quick question. It is very important to all parties involved."

JOHNSON "You have 9 seconds."

KAPLAN "May I have the ability to negotiate on the east side of the high lines if that is the mutual desire, if that brings accommodation to all of the parties here, just to negotiate a different location. If that is what brings accommodation to the attendees at this meeting. That is all I want."

KROUT "Bob, you know that zoning can be a matter of consent...."

KAPLAN "I understand that."

KROUT "By adjoining owners. Do you expect to reach an agreement in the next 14 days before there would be a protest that might be filed on this property?"

KAPLAN "I don't know, Mr. Krout, but I just felt that...we have had about four hours of discussion today, and if it is possible to come to an agreement and satisfy everybody, that is better for everybody. I just simply want, in addition to the motion that is made, if I could have it, the ability to negotiate a different location. It can be subject to Planning Department approval. I just simply want that option because I think it might be helpful to everyone here. If I can't have it, I will work with what I got."

WARREN "Well, as the motion maker, I made it a little bit on the basis that their experts said it could work on the west 40."

KROUT "That is your recommendation, and you are going to stick with your motion?"

WARREN "Yeah."

KROUT "Okay."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition.

KROUT "Bob, I would just say that you have the ability still, in the next 14 days to work out some other agreement and then appeal the Planning Commission's decision, so that if you think you have an agreement, you can go on to the County Commission with some change to the site plan."

KAPLAN "All right. Thank you all very much."

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- 7a. Case No. DP-244** – Dale and Norma Hecox Living Trust, and Bowen Brady (owner); Aspen Wood Development, LLC, by Steve Classen (contract purchaser); Austin Miller c/o Tim Austin (agent) request the approval of the Ashley Towne Centre, and:
- 7b. Case No. Z-3326** – Dale and Norma Hecox Living Trust, and Bowen Brady (owner); Aspen Wood Development, LLC, by Steve Classen (contract purchaser); Austin Miller c/o Tim Austin, Tim Austin (agent) request zone change from "SF-20" Single-Family Residential; "B" Multi-Family Residential; "GO" General Office to "LC" Limited Commercial on property described as:

Lots 1, 2, 3, 4, 5, 6, 7 & 8, Ridge Plaza 5th Addition to Wichita, Sedgwick County, Kansas.
and

A tract of land described as follows: beginning 1,320 feet West of the Northeast corner of the Northeast Quarter of Section 28, Township 27 South, Range 1 West; thence South a distance of 300 feet; thence West to the East line of Holland Lane; thence Southeasterly along the East line of Holland Lane to the North line of University Avenue; thence Northeasterly along the North line of University Avenue a distance of 541.42 feet to the West line of a drainage dedication; thence Northwesterly along the West line of said drainage dedication a distance of 832.45 feet to the North line of said Northeast Quarter; thence West along the North line of said Northeast Quarter a distance of 113 feet to the point of beginning, except the North 30 feet thereof taken for road right-of-way.

and

A tract of land described as follows: beginning 1,320 feet West of the Northeast corner of the Northeast Quarter of Section 28, Township 27 South, Range 1 West; thence South, a distance of 300 feet; thence West to the East right-of-way of Holland Lane; thence Northwesterly along the East right-of-way line of Holland Lane to the North line of said Northeast Quarter; thence East along the North line of said Northeast Quarter to the point of beginning; except the North 30 feet thereof taken for road right of way

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

The applicant is requesting approval of the Ashley Towne Centre Commercial Community Unit Plan as DP-244, and that the property be rezoned to "LC" Limited Commercial. The application area is a portion of the existing DP-37 Ridge Plaza C.U.P. Approval of this application would supercede the approved C.U.P. for DP-37 for the application area.

The proposed C.U.P. contains a gross area of 19.0 acres and a maximum building coverage of 248,364 square feet of gross floor area (30 percent maximum building coverage). The site is located near the intersection of Maple and Ridge, and is visible to traffic travelling along Kellogg. The applicant intends to capitalize on this visibility to create a new major planned retail center that would serve residents living on the western side of Wichita or travelling along Kellogg.

The C.U.P. contains four parcels. Parcel 1 occupies the western portion of the C.U.P. and is intended to accommodate a retail commercial center with up to eight buildings, connected together, most being 10,000 to 30,000 square feet in size. According to the developer's concepts, the buildings on the end of the center will be oriented to the east and the buildings in the middle will be turned on a 45° angle with facades that face southeast toward University Drive. This gives visual clues that University is to be a major entrance to the shopping center, and provides visual orientation toward the center for westbound Kellogg and northbound Ridge Road traffic. The turning of the buildings on an angle also screens loading areas from Maple and provides an interesting architectural element.

The remaining parcels are shown as three out-parcels located on the eastern portion of the application area. Parcel 2 is designed as a pad site with one building permitted. Parcel 3 is designed as a pad site also, but with a maximum of two buildings permitted. The developer has indicated both of these pad sites would be ideal for a restaurant or for financial institutions. Parcel 4 is proposed as a single pad site with a 30,000 square footage to be used in up to three buildings or, alternatively, as two pad sites. This gives some flexibility to the developer in tailoring the out-parcels to the needs of potential retail users for the sites.

The proposed internal circulation includes the main circulation drive connecting Maple with University in the middle of the application area separating the retail center on the west from the pad sites on the east. A half traffic circle in the middle of the drive serves as a traffic calming device and allows easier crossing of the road by pedestrians. A network of pedestrian walks connects the retail center with the pad sites, with the main connection radiating from the traffic circle.

Setbacks are shown at 30 feet on the C.U.P. but would need to be increased to 35 feet on a revised plan to meet minimum setback requirements for a CUP specified in the Unified Zoning Code. Maximum height restrictions are not included on the C.U.P. The standard maximum height in CUPs. is 35 feet, and this is the recommended height for this C.U.P. The revised site plan should also change the parcel descriptions to include identification of gross area, maximum gross floor area, and floor area ratio.

A screening wall of six to eight feet in height, constructed of brick, stone, masonry, architectural tile or other similar material, is required along the western property line since it is adjacent to property zoned "SF-6" Single Family. General Provision 20 will need to be revised to reflect this requirement.

The applicant has shown three openings onto Maple Street, a four-lane arterial. The major opening is between the commercial strip on the western portion of the C.U.P. and the pad site on the eastern portion. As shown on the plan, the opening is 150 feet from Ashley Park, the street that provides access to Ashley Park Addition. The applicant has been requested to shift the opening 150 feet further to the west to increase the separation between the two streets to reduce left turn conflicts. Two smaller openings are shown near the property lines of the C.U.P. The applicant has agreed to designate the smaller openings on the eastern and western edge of Ashley Towne Centre as "right-in" and "right-out" only to avoid conflicts from left turn movements attempting to enter and exit onto Maple. The applicant intends University to be the primary point of access for patrons northbound from Ridge and Kellogg. University is a local non-residential street and does not have access restrictions. Its name switches to Taft at a curve east of the application area. Taft has a signalized intersection with Ridge approximately half the distance between Kellogg and Maple. This signalized intersection would be the most direct entrance to Ashley Towne Centre for traffic northbound on Ridge from Kellogg. Currently, Taft/University is constructed with two wide lanes, but with sufficient width to add a third lane. Staff is requesting additional traffic improvements along Maple and University, as will be discussed in the recommendations. In the event that the applicant is unwilling to accept these improvements and suggests alternate traffic improvements, staff would request preparation of a traffic study by the applicant. The traffic study would need to document that alternatives will suitably address traffic generated by the commercial development. In this case, Staff would request deferral of action on the request until the traffic study is completed and reviewed by Staff.

The applicant has included signage provisions in General Provision #5 that do not correspond to the current sign code and are not typical of those for CUPs. It is suggested that General Provision # 5 be changed to allow two signs for identification purposes. One would be a monument sign not taller than 20 feet along Maple; the other a pole sign in the southeast corner of the property, in order to provide visibility from Kellogg and Ridge. The developer has represented in meetings with staff that no additional signs other than building signs were needed. Also, GP #5 (A) should be deleted to reflect that MAPC is the more appropriate venue to address any future modifications in signage, since it is a part of the C.U.P., rather than the Board of Zoning Appeals.

Changes have been included in staff recommendations to the proposed landscape, architectural controls and lighting restrictions for the C.U.P. The proposed changes on architectural controls and lighting seek to give the project a greater degree of coherence and reflect the preliminary design proposed by the applicant in its preliminary site plans. The landscaping provision clarifies that buffering be added on the backsides of the pad sites to buffer from the adjacent drainage dedication. Additionally, it is requested that General Provision #17 be deleted since it conflicts with the intent of General Provision #2, which states that "the development of this property shall proceed in accordance with the development plan as recommended for approval..." and because it circumvents the purpose of preparing a C.U.P. for unified development of a parcel.

The applicant is seeking all "LC" Limited Commercial uses except residential uses; day care; pawnshops; secondhand stores; taverns; night clubs; drinking establishments; adult entertainment; tattooing and body piercing; correctional placement residences; limited and general; group home, limited and general, and commercial; recycling collection stations, asphalt or concrete, limited; manufacturing, limited; mining or quarrying; oil or gas drilling; rock crushing; solid waste incinerator; and all industrial uses.

The surrounding land to the north across Maple is zoned "SF-6" Single-Family Residential, and is developed with Ashley Park Addition. A large residential tract fronting onto Maple is zoned "SF-6" and occupied by Brown's Botanicals. To the west are more single family residences. Mary Benton Elementary is located on the western property line of the C.U.P. and is zoned "SF-6." Ridge Plaza borders the tract to the south and is zoned "LC" Limited Commercial. There are a number of commercial/office uses in the

area, including Typed Letter Corp., Pitney-Bowes, several office buildings, and a gymnastics facility. The eastern edge of the site is bordered by a drainage channel, with Lowe's being located between the drainage channel and Ridge Road.

CASE HISTORY: The application area comprises Parcels 23-27 of DP-37 Ridge Plaza C.U.P. Approval of this application will supercede the Ridge Plaza C.U.P. for these lots only. Parcels 25-27 were platted October 15, 1979 as Lots 1-8 of Ridge Plaza 5th Addition. The balance of the tract is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: ASF-6" Single family residences
SOUTH: ALC" Commercial, office use
EAST: "LC" Drainage channel Lowe's
WEST: ASF-6" Elementary school

PUBLIC SERVICES: Municipal water and sewer service is available. The property has access to Maple, a four-lane arterial along the frontage with the proposed C.U.P., and five lanes at the intersection of Maple and Ridge with 1997 traffic volumes of approximately 16,300 average daily trips (ADTs) at Maple and Ridge. Taft/University Avenue, a non-residential local street, had a 1997 volume of 1,905 ADTs at the intersection with Ridge. The 2030 Transportation Plan projects traffic to increase to approximately 18,300 ADTs for Maple and Ridge. These 1997 volumes do not reflect the addition of Lowe's, an existing high volume traffic generator, nor the projected increase that would result if this C.U.P. were developed. Traffic could be anticipated to be significantly higher when this development is completed. No improvements are scheduled in the 2007 Capital Improvements Plan. Volumes are not projected for Taft/University since it is a local street.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area for future commercial, office and multi-family residential development, in conformance with the zoning pattern established by DP-37 Ridge Plaza C.U.P.

The commercial locational guidelines recommend that commercial uses be located in "planned centers" with site design features which limit noise, lighting, and other activities so as to not adversely impact surrounding residential areas. Also, the planned centers should be oriented to minimize traffic impact due to its location in relation to major traffic routes and the use of shared access points. The development of out parcels should be integrated in relation to planned retail centers through shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress.

RECOMMENDATION: The proposed C.U.P. for Ashley Towne Center conforms with Wichita's general guidelines for commercial development and offers a concept for a retail commercial center and out parcels that could form a desirable neighborhood shopping center in this area of Wichita. Therefore, based upon information available prior to the public hearings, planning staff recommends the following:

- A. APPROVE the zone change (SCZ-3326) to ALC Limited Commercial, subject to platting of the entire property within one year.
- B. APPROVE the Community Unit Plan (DP-244), subject to the following conditions:
 1. The applicant shall agree to provide the following transportation improvements:
 - A. A continuous left turn lane extending from its current terminus on Maple westward to Woodchuck Lane.
 - B. Provide a right turn lane across the frontage of the property abutting Maple.
 - C. Stripe University Avenue to accommodate three lanes of traffic, with the third lane for left turns into the application area. Show the location of drive openings onto University on the revised C.U.P.
 - D. Limit the access for the eastern and western openings onto Maple as "Right-in Only" and "Right-out Only". Shift the major opening along Maple so as to be 300 feet west of Ashley Park.
 - E. Each parcel shall be permitted one directional sign of up 18 square feet off the internal circulation drive.
 2. A site plan and elevations shall be submitted in conjunction with the revised C.U.P. The revised C.U.P. shall include identification of gross area, maximum gross floor area, and floor area ratio in the parcel descriptions. Maximum height of 35 feet should be added as a general provision.
 3. General Provision #3 shall be revised to state that setbacks are 35 feet along Maple Road, University Avenue, and along the residential district abutting the western property line.
 4. General Provision #5 shall be revised to state: "Signage as permitted by Zoning District shall be permitted in accordance with the provisions of Chapter 24.04 of the Code of the City of Wichita. Additionally the following provisions shall apply:
 - A. One identification sign of a monument type, no greater than 150 square feet in size and with a maximum height of 20 feet, shall be permitted along Maple in one of the two areas identified as Reserve "A".
 - B. One pole sign for identification purposes no greater than 150 square feet in size and with a maximum height of 35 feet shall be permitted in Reserve "C" along University Avenue in addition to signage permitted in (A). This sign may be within 150 feet of other signs on the same parcel.

- C. General Provision #8 should be removed. Street right-of-way and pavement widths, and guarantees for street improvements should be determined as a part of the C.U.P. process and be reflected in the revised C.U.P.
5. General Provision #11 shall be revised to state that access shall be limited to three openings along Maple, with the western-most being "right-in only" and the eastern-most being "right-out only".
 6. General Provision #16 shall be revised to state that a landscaped street yard shall be provided along Maple Road and University Avenue. A buffer strip of evergreen and/or deciduous plant materials that provides a solid screening effect on at least two-thirds of the property line shall be provided along the drainage dedication.
 7. General Provision #17 shall be deleted.
 8. A general vehicular and pedestrian circulation plan shall be included on the revised C.U.P. and serve as the guidelines for interpreting General Provision #18.
 9. General Provision #19 should be revised to state: "Architectural Control:
 - a. All building within the property shall share similar architectural character, color, texture and the same predominate exterior building materials. Building walls and roofs shall have predominately earth-tone colors, with vivid colors limited to incidental accent.
 - b. All parking lot light poles shall be of the same color and design, and shall have cut-off fixtures, which direct light away from nearby residential areas. Light poles must be limited to a maximum height of 24 feet.
 - c. Any development shall be in general conformance with the site plan and elevations as submitted with the revised C.U.P."
 10. General Provision #20 shall be revised to state that the screening along the west property line shall conform to screening requirements for CUPs contained in the Unified Zoning Code.
 11. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
 12. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
 13. All property included within this C.U.P. and zone case shall be platted within one year after approval of this C.U.P. by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
 14. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-244) includes special conditions for development on this property.
 15. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 30 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding land is zoned "SF-6" Single Family to the north and west. There are single family residential subdivisions to the north. One commercial use is interspersed between subdivisions. An elementary school is located to the west. The surrounding land is zoned "LC" Limited Commercial to the east and south. The property is developed with retail to the east (Lowe's) and office/commercial park to the south. A large drainage channel separates Lowe's from the subject tract.
2. The suitability of the subject property for the uses to which it has been restricted: The tract is zoned for a combination of limited commercial on the east, general office on the northwest and southwest, and high-density multi-family between the office areas. The C.U.P. for these uses was developed in the 1970s. The areas zoned for office and multi-family have been platted for these uses since 1979. The property has been by-passed, with development occurring on all sides. The significant length of time that the property has been available for development but remained vacant tends to indicate the original development plan was not as suitable as an alternate plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Although development of the subject property with commercial uses would establish a dramatic change in the existing land use pattern of this area, the limitations included in the C.U.P., as recommended by staff, should mitigate most future impacts.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The request, as recommended by staff, is in conformance with the commercial locational guidelines of the Comprehensive Plan. The bulk of the property is shown for commercial development on the Land Use Guide, making the majority of the application area in conformance with recommendations of the Land Use Guide.

5. Impact of the proposed development on community facilities: The greatest impact would be created by a significant increase in traffic along Maple. This would create additional traffic congestion along a street that already offers difficulties to adjacent landowners attempting to enter and exit their properties along Maple. It would also increase the congestion faced by those travelling to Mary Benton Elementary, which is already subject to congestion during school arrival and dismissal times, and during special events. The impact of this congestion can be mitigated by providing the proposed right turn lanes and "right-in", "right-out" access points, along with a continuous left turn lane to allow stacking of queued vehicles.

GOLTRY "The CPO Council 6 met last night and voted 7-0 to recommend approval, subject to MAPD staff comments and adding these three additional comments. a.) That the applicant be required to provide an 800 foot continuous left-turn lane, not 2,000 feet. b.) That there be no sidewalk along the south side of Maple. There is already one in place, and c.) that there only be one exit onto University Street. There were four shown on the original site plan."

KROUT "I thought we had modified our recommendation on the left-turn situation. Maybe Jamsheed can explain that."

GOLTRY "We also had said that if they chose not to provide the continuous left-turn lane that they could provide a limited traffic study to show the proportionate share, and that we would be willing to have them do so between now and subdivision platting process so it would not delay the process of proceeding on the project. So basically, we were presenting them with options, either accepting the recommendations or doing the limited traffic study."

GAROFALO "On that site plan, show me where all of the opening are."

GOLTRY (Indicating) "On this one, the primary opening is right there. And then that was a service, and this was a service entrance to be right in, right out, only now we are looking at an entrance there, and I think right there. Instead of these three. It would eliminate these three and replace them with two."

GAROFALO "And what about down there on University?"

GOLTRY "On University they were originally four."

MCKAY "And what is your recommendation now?"

GOLTRY "We had not made a recommendation for limitations on University. We had recommended on University, since it is a wider street, that it be striped for 3 lanes so you could have a left-turn lane on it, but had limited the openings along it."

GAROFALO "Why would they need four on University?"

GOLTRY "They probably will not need four if they re-design from the three to the two entrances on the north. They could definitely drop down at least one of the entrances since they won't have a service entrance along the back."

KROUT "We normally don't have that much concern about traffic on a collector street in terms of the openings. The main concern would be on Maple or on Ridge, if this were on Ridge Road. So I think the CPO somehow felt that if you limited the number of openings on University that.....Dale, what was the rationale?"

MILLER "They thought that traffic would go to the east if there was only one access point, but they didn't explain exactly how that was going to work."

KROUT "They thought there would be less traffic on University if you would limit it to one access point, and their concern was the University to Woodchuck movement, I think. I don't believe that that would happen, but that was their recommendation."

JOHNSON "Are there any other questions of staff?"

Wheeler left the meeting at 6:10 p.m.

MCKAY "I have a concern with Mary Benton Elementary addition to the west of this. They show an access road that is going to abut, and that is where all of the big traffic, as far as big trucks and stuff like that is going to be coming. Is that true?"

KROUT "Their property would be separated by a masonry wall."

OSBORNE-HOWES "Is there a masonry wall? I didn't see any."

GOLTRY "We recommend that there will be one. That is one of the recommendations."

OSBORNE-HOWES "Okay."

JOHNSON "Are there any other questions?"

MCKAY "I am having a real tough time. You guys that have been on the Subdivision Committee know that I am going to get on my soapbox now. It is that they present this, and this is not what we are approving. I am having a real tough time with this being presented and us approving something else. They say 'we want to do this, and we want to do that, and we want to do this', but I am

looking at 4 entrances off of University, a change from what they changed. I mean, it is not even what we are approving. That is what I am looking at, and I don't have any concept of what I am approving."

Warren left the meeting at 6:18 p.m.

KROUT "I understand that. I guess, in their defense, they have drawn this up and then staff said 'where the entrances are located along Maple is going to have an effect on your plan, and we are not sure that that works'. It has, potentially, a major impact on their plans, so I understand the concern. They have moved, and their new location of the drive-way, they have moved it over further west than we think it needs to be, and where they have moved it, it would have a drastic effect on the site plan. We felt strongly that this is the site plan and the elevations, which I don't know if you have a slide of..."

GOLTRY "I don't have a slide of the elevations. I do have one picture of them."

KROUT "...that they have submitted to us and to the neighborhood, and it is across from a single-family neighborhood, and so they should be more detailed. That is reviewed as part of the approval process."

MCKAY "Now they are having these 9 or 10 people left here help design the project. I think that is between engineers and the staff to present something to us. What they are going to end up with is not going to be anything like what we are looking at."

KROUT "I think you need to ask people who are here to have their hearing, but I think if you feel at the end of that that this needs to be deferred and re-worked, I can understand that."

MCKAY "I, for one, will not approve it based on that drawing. That is not what we are approving. So many times we set in Subdivision and re-do the plats for the engineers because they talked to the staff and they get it all done in the last 30 minutes before they come in to the Subdivision Committee. We are doing the same thing here."

KROUT "No, because this is not all done."

MCKAY "Okay, but you are asking us to approve a CUP, not based on what we are looking at. I have been in this business 35 years, and I always have to bring mine up for finalization."

JOHNSON "Are there any other questions of staff? Applicant or agent?"

CURT ROBERTSON "I live at 8913 East 69th Street. I am one of the partners of the Ashley Town Centre development. I will try to be real brief because I know it has been a long day. Real quickly, in response to Mr. McKay's comments, we submitted a conceptual plan and we looked forward to the City's comments regarding that plan. We have agreed to virtually every issue that has come up in the Commission's comments, and we just wanted to state that we really just have a few issues to deal with. I think, at this point, in order to keep things short, we will just bring the engineer up here and address those issues."

But again, the issue of the access points has been agreed to, I think, between the staff and us. Again, I want to point out that it was totally a conceptual plan and we have agreed to give up the three ingress/egress points off of Maple and go with just the two, which is what staff is recommended, and what we have agreed to accept. We have also done that in a way to maintain the integrity of the site plan and not alter it, with the exception of just relocating the curb cuts."

KROUT "Could I just ask a question before he starts? You are saying that the site plan that we saw that is on another slide there is not going to change substantially?"

ROBERTSON "Basically all we have to do is shift one side over to allow the access to come in to the east of it and then we will curve the drive back over to the center of the center."

MCKAY "How are you going to handle all of the big trucks that come in between there and the school? When you show that up there, you show a direct access off of Maple, going straight through down to..."

ROBERTSON "No, that goes away. We have taken that away and we will have two ingress and egress points."

GAROFALO "Why don't we get that other slide up there? That might be helpful. Yeah, that. What are you going to eliminate and what are you going to keep, and what are you going to change?"

DAVE YEAROUT "Let me take a run at this. The entryways would be roughly here and here (indicating). This entryway would come in and have the access through it. You are just not going to have a direct access onto Maple. Both of them are proposed to be major entrances, which would be wide enough to accommodate the turning movements and those kinds of activities. There will still be the internal circulation through. It just won't have a direct shot out on to Maple at the north side."

This entrance is proposed to come clear through and then at this point have an access back in the cross lot on the entire project. The building footprint design, the orientation of buildings is not necessarily intended to modify or change the major entrance in here with the ability, then to continue to flow through the center.

The idea is to go from three entrances on Maple Street to two, use the same basic internal circulation pattern, and the orientation of the buildings and the center as a unified development, will remain pretty much as shown here. But this becomes a direct line through that connects University Street here to Maple. We would anticipate some exits out in here, but the same thing could occur,

either this access could come through, or, if necessary, bend and come back out further to the east. In internal traffic circulation, those are the options. And that is kind of where that aspect of this sits.

Our understanding is that the traffic has already accepted the idea of the two major entrances as opposed to two major and two secondary. So we have reduced the number of openings on Maple from three to two. This was submitted as the original concept and this then because the CUP drawing that attached to that, but from the time that was submitted until now, and I think there has been a revised plan that has been submitted. It is just not in the slide tray.

That is what has been discussed in general. In the dialog with the City staff on traffic. And I appreciate, John, you made a comment about when it gets here, it is still in a state of flux."

MCKAY "So, are we still talking about 4 exits onto University now?"

YEAROUT "I don't know how many because most of the focus has been on Maple. The issue of access to University has never been talked about."

MCKAY "Didn't CPO say one?"

YEAROUT "Well, and that happened last night."

MCKAY "What is your opinion of that?"

YEAROUT "Well, I wasn't there."

ROBERTSON "Realistically, I don't think it is probably practical because I think we can actually direct some of the traffic over to the Ridge Road corridor at the stop light by having as many entrances as possible, and actually kind of help control and distract traffic from going through the University corridor. What happens is that business traffic comes off of Ridge Road and they cut down University and then go to Woodchuck and come over. That is the business traffic coming through there, and I don't think we can solve all of the problems. What we can do is be a distraction there, maybe pull some of that traffic off of there and disperse it a little bit over a different period of time.

The initial concept showed this, and again staff had no problem with it. The CPO just mentioned it last night. They also mentioned something about blocking off University, too. But I don't know how realistic either one of those ideas are."

MCKAY "I have a tendency to agree with Marvin that it is not going to go west and go up on Maple, past Woodchuck because it is too hard to get onto Maple Street. People won't follow the traffic light, in my opinion."

KROUT "I guess, John, I would say that in the earlier discussions I heard about going from three access points to two access points and the locations of those two access points looked like they were going to require a real big change in the site plan. What you are saying is that you have modified where the locations of those two access points were so that you can still work within this concept plan that you have developed."

ROBERTSON "Basically, all we have had to do is shift this parcel over and then what we have is a little corner, and that will be a reserve area and then a curb cut will actually come in and go through the center of the concept, with a traffic feature. That pretty much does change our concept and it keeps the traffic close moving and also keeps a good line of site."

MCKAY "When the plat comes up, are we going to have a complete CUP that we know we have approved so we can kind of coordinate the plat with the CUP?"

ROBERTSON "Yes, and it is our understanding that that is where the bulk of these issues will be taken care of is in the platting process itself. Then our request today is dealing with the zoning issue."

YEAROUT "The answer to your question, John, is yes. The issue on guarantees that was discussed even last night and is addressed in the CUP recommendation, they are agreeing to guarantee the improvements along Maple that abut the property. But to take it then, the additional 608 feet further to the west, all the way to Woodchuck, they have not agreed to do. They don't feel that is fair. There is other land to the south and west that still will develop that will have an impact and for these people to be the one to guarantee all of that, the approved zoning and CUP on this property today, and correct me if I am wrong, I was advised just a bit ago that the estimated traffic impact on this development as compared to what is already approved on the site between apartments and office uses is virtually a wash. There is no difference between the numbers.

So we are not creating any more traffic demand, as I have been advised, over what has already been approved, so we are willing to guarantee the improvements adjacent, but we do not agree with having to stand for the off-site improvements that go far off that we are not contributing any more to that is already there."

KROUT "Just to clarify that, are you agreeable to doing the limited traffic study on Maple to determine what would be a fair share of the cost of extending that further east?"

YEAROUT "Of taking that further east? Define limited. I don't know."

ROBERTSON "I suppose that is something we would have to look at. I think one of the issues here, and I will pass around an aerial, this site is also adjoining about another 40 to 60 acres of commercial property that is eventually going to be developed. We are more than happy to pay our fair share and pay for the turn lanes in front of our site, but we think there should be some responsibility of some of the other property owners in the area, especially since Lowe's wasn't asked to continue their turn lane all the way over to our site, Outback wasn't asked to make any continuances on their turn lanes.

I will pass around an aerial that shows some of the vacant property around this site that is all already zoned Light Commercial and could have some impact on this area."

MCKAY "Marvin, why are asking them to pay for a traffic deal for the whole area when that is you guys' job. I know you got by with it with those guys up on 29th and Rock Road at the apartment complex, but it sounds to me like we are starting to ask the applicant to pay for stuff that we should be providing and making determinations of."

KROUT "Are you talking about extending the left turn to Woodchuck?"

MCKAY "No. I am talking about the study."

KROUT "Doing the study? We are saying that if they do the study we will be able to determine from their turning movements how they are adding to the traffic problems along Maple and the problems at Benton school traffic, and maybe Woodchuck."

MCKAY "How extensive is that traffic?"

KROUT "I think Jamsheed is probably the best person in the room now to be able to tell us how extensive it would be. I think it would be limited in extent only to traffic movements that are at Maple and Woodchuck and not an overall traffic study for this development."

JAMSHEED MEHTA, Planning Staff, "I think the recommendations were that the left-turn lane be continuous and that is approximately the 2,000 feet. It originates where the left-turn terminates in front of Lowe's and would continue all the way to Woodchuck, unless the applicant feels that that is not necessary, then it would show in a traffic impact study, but a limited one, not the full-blown traffic study that you would do for every drive-way location. Just limit that study to what is the required queuing land you need for those left-turn lanes, and what would be the queuing required after adding traffic from this side onto Maple so that those who are stacking up to make turns onto Woodchuck going west, turning south. What would be the impact now that we have more traffic coming to the site, more traffic leaving from the site, and only four lanes, approximately, in front of Benton Elementary.

Now, about the left turn lanes, and you will be revisiting this with the plat if you decide to take this issue at the plat stage, you have three entrances, a right and right out, a main entrance, another right and right out. Under this concept, the only left-turn lane that would be required would be from here going back."

MCKAY "Back how far?"

MEHTA "Because there is Ashley Park right about there, and it is within about 150 feet, our suggestion to them was to add another 150 feet, so you would have about 300 feet. That 300 feet being good enough for their main turning movements, left turns, into their site, and at the same time to allow for some limited amount of left-turns into Ashley Park up there, and the offset would be about 300 feet. That was our proposal.

The applicant comes along and suggests instead of doing that, why not take this drive-way and make it more than 150 feet that we had requested and bring it further out here, but then eliminate this right and right out, and instead turn this into another major drive-way. So they are talking about two major entrances, so now we are talking about stacking for two separate left-turns. Based on what the CPO went through yesterday, from what I understand now, 800 feet is all they are requesting for that left-turn facility across their frontage.

You would need to have left-turn lanes extended back this way across Lowe's frontage to accommodate the storage to go into this main entrance because now this is a full main entrance, just like this one was originally. So we would be talking a little more of left-turning lane. How much would be determined by that limited traffic study which would suggest what is the split between their one main driveway and the other one, and how much left turn storage they need. After that, how much are we left with between where the left-turn terminates as it is today, and the one that we would want them to see. I am guessing that for that reason, it might well be a flushed left-turn lane going all the way from where it terminates, at least to the point where they proposed a main entrance, their second main entrance. Now, that leaves the issue of left-turn for Woodchuck."

MCKAY "I understand what you are saying, but I don't understand why they want two now, after listening to that."

KROUT "The problem became that that middle road, while it looks nice in the plan, is just too close to the Ashley Park entrance to be safe."

MCKAY "Well, kick it to the west."

KROUT "We had to kick it to the west. I don't know, it could still be a right-turn only, I guess, at the same two places. You will have to ask them why they felt that they needed to make those changes."

MCKAY "Wouldn't you guys be better off to have the main entrance and the two right-turn lanes? I don't like it because it is coming off right there by the school is a big trouble, but that's how it is."

ROBERTSON "Well, if we shifted it over, originally when we proposed this, we looked at it, and unfortunately Randy (Hoskins) isn't here, but Randy had recommended that we move it over to the Center and we looked at that for a distance, but then, Jamsheed recommended that we move it over up to 100 to 140 feet and pretty soon, that puts it in front of this center so you've traffic coming into supposedly a pedestrian-friendly center. It kind of throws off the concept of the center and kind of divides it, and maybe even creates more of a traffic hazard there."

We don't have all of the answers, but Randy had suggested that we line up the entrance with Ashley Park Town Centre and limit it to two entrances. So we tried to accommodate that request and that is what we have agreed to and have done."

MCKAY "Back to my original question, if they provide you with what they feel like the traffic count is going to be going in and out of there,....you guys don't do the traffic count, or you want them to pay for the traffic count?"

KROUT "Well, I think we have traffic counts. We are just asking them to do the estimate of the traffic movements and what queuing will be. I don't think that is a very extensive study. I think what it will show is that you add relatively little to the problem that already exists at Woodchuck and Maple and the fair proportion of the cost of that extension of the left-turn. But you will be adding something to that."

ROBERTSON "We are willing to do what is fair. The fair thing might be to have a special district. If the City wants to pave from Ridge Road all the way to Tyler Road, a center lane, that would probably be the best thing for this area. Our question is how much of that burden should be on us, and we are willing to do our fair share."

KROUT "Maybe, and I am suggesting that we can save that argument, just like we will probably have an issue with Bradley Fair in the future, if that property ever plats for the department store, we have some unresolved issues about what does a fair share mean. We will probably talk about that at the platting stage, too, but there is always the level of traffic that is on the road today. Maybe we should just put a toll booth on there."

ROBERTSON "That may be the solution, and there is a great deal of traffic. It is a problem that, unfortunately for us, it was there before we proposed this project."

KROUT "I think that would be taken into consideration that there is background traffic that is there and is going to continue."

ROBERTSON "Exactly. And Lowe's has created a great deal of that traffic as well as the work traffic coming in from the plants there. We realize that. We have 800 some foot of frontage there that we have agreed to put acceleration/deceleration lanes in and turn lanes across the whole front. We just wonder how much more really is fair for us to have to do. But we are willing to look at it."

MICHAELIS "I have a point of clarification. If we look at this in the CUP, we are just looking at it from the standpoint that we think this is a use that will fit within this area, and then when they come back with the final plat stage, that gets back to where John was saying 'I want to see what we are actually approving'. Is that correct?"

KROUT "What we try to do at the point of a CUP is to identify where the access points are going to be, what the concept plan is, and if there is any architecture or special controls that are related to being a compatible neighbor. That is established as part of the CUP, but certain details like the exact location of that access point, or the exact nature of improvements on the adjacent street can be left to the platting stage."

The result is that the CUP is a document that basically tells you when you look at it, this is what you can expect to get. So, this is the time that we feel is important to establish where the access points are because it does relate to their site plan."

MICHAELIS "Thank you."

OSBORNE-HOWES "I am trying to remember. Have we heard from everyone in the room? No? Then we are really jumping ahead of ourselves. I am also afraid that we are about ready to lose a quorum, I think."

JOHNSON "Are there any other questions of the applicant?"

PLATT "I would just make one comment to them. As one proposal is to have a road all the way along on the east side of the property, and looking at the arrow, it looks to me like that is going to be one big thoroughfare for people cutting between University and Maple."

OSBORNE-HOWES "I will be doing that. Every day. If we do that, I will do that."

KROUT "I don't think we are going to reach a decision today, and I think that as a courtesy, I would recommend that we hear from everybody who is here and we may have to be back here a couple of weeks from now to try to resolve this."

JOHNSON "Okay. Is there anyone else here to speak in favor? Is there anyone here to speak in opposition?"

BRIAN STUART "I reside at 229 South Ashley Park. I am the president of the homeowners' association, and I am representing the association. The developers were good enough to meet with the homeowners' association, and I have the same concern that

Commissioner McKay has. This is what they brought to us; this is what we would like to see. Now it has already changed some, so we are a little concerned, although, speaking with Traffic and different people, if we move the entrance down, we can keep the traffic flow down. We are already jammed. You pull up to Kellogg heading west and you can't get onto Ridge. At various times of the day, you cannot get down there.

We know this is going to develop, we are concerned that if we put apartments in there, the home values are going to go down. That is my job as president of the homeowners' association, to protect our home values. We think that this will not lower our home values. We are going to fight traffic. We do want a left-turn lane. We agree with Traffic that there should be a left-turn lane clear to Woodchuck. On the other hand, I don't feel that it is necessarily fair for these guys to pay for that. I think USD 259 should be responsible for part of that because Mary Benton Elementary creates a tremendous amount of traffic at various times of the day. I know they are going to be thrilled to do that, but in my opinion, and the board, who I polled last night is the same, that they shouldn't be responsible for all of that, USD 259 should pick up some of the cost, and the rest of the commercial development that is going to happen down there should pick up some of the cost.

But it is important, and I think it will eliminate some of the traffic, and it may even make traffic somewhat better to have the right-hand turn lanes and the left-hand turn lanes there. We would, as an association, like to see a final plan, have some type of architectural control because we all know that developers, if this doesn't rent out as quickly as they would like for it to, we don't want a boxed up, squared up strip center in there either. What you approve needs to have some type of architectural control on it, as far as we are concerned.

At the CPO meeting last night, the biggest concern, and it was brought up a couple of times, is the traffic to Woodchuck. Davis-Moore was here before, and we are concerned about the traffic to Woodchuck. One of the things that was brought up was that down here (indicating), it was suggested that we cul-de-sac off University. There is not a lot of traffic on University past this point, and there are some duplexes further up here. There is not a lot of traffic past that point. If you cul-de-sac that off or look at that idea, it will eliminate the traffic from Ridge continuing on, circling around as they pull out of the retail center and try to avoid various traffic jams, go down Woodchuck and come back that other way. It is just a possibility, something to think about, but we are concerned with the kids' safety, too, although our opinion was, as was the Board of Directors, was that the retail time frame will be good for the school. You are going to be busy on the weekends and you are going to be busy in the off hours of the school. It is better than having office buildings and apartment complexes.

So, as far as I know, the Board of Directors agrees. We think this will be a good thing for the neighborhood as long as the traffic issues are taken care of. This triple entrance kind of concerned us to start with because you are right, it is only 100 feet off of Ashley Park and it is going to be a real jam-up. But if we line it up to Ashley Park and I don't have to drink my entire cup of coffee before I go to work in the mornings sitting there, we will be happy with it. Are there any questions?"

JOHNSON "Is there anyone else to speak in opposition?"

Frye left the meeting at 6:45 p.m.

CRAIG HOGUE "I am with the Mary Benton Site Council. I have already explained what the Site Council is and the reason for my concern. As you see this aerial, you see that there is a tremendous amount of undeveloped commercial land, which at the CPO last night, I have to agree that they don't necessarily do the right thing, but sometimes they do and another board overturns it. Sometimes they don't, and that is the way it is.

But there is a tremendous amount of development that will be going on in this area. The recommendation of the staff was that University becomes a nice thoroughfare to feed this commercial area of development. They recommended that it go to a three lane. There is a stoplight at Taft and Ridge. There is a stoplight at Tyler and Lowe's. The entire area is asking to be re-developed. It is asking to be re-zoned. There should be a shared usury group in order to make some of the improvements that are going to be necessary to handle the amount of traffic that is going through there. Our concern is traffic based on the safety of our children walking back and forth. We have 480 children going to that school. We have asked for a capital improvement 2000, 2009. We went to capital improvement and asked for Woodchuck from Maple to University to be improved so that it would take care of the immediate needs of the children at that site. Does anybody know anything about that capital improvement in 2000, 2009?"

KROUT "No, but improving Woodchuck, which is a collector street would be real unusual for the City to do."

HOGUE "Okay, we are calling it a collector street now, by definition, because we have not loaded it with the commercial development. I see 150 acres. If anybody sees any more than that, or less than that, I would appreciate knowing. But there is 150 acres in that whole zone that is going to feed to that non-collector street, which is my concern and which is the concern of the staff, the concern of the children and the concern of the parents. That is where I am.

I agree with the turning zones as staff set forth. I think they are wonderful. We are concerned about children walking through Lowe's parking lot to get to the other area. Last night the CPO asked that we do away with some of the sidewalk. That was one of the recommendations."

KROUT "Do you agree with that?"

HOGUE "I don't know where that came from."

ROBERTSON "It was to keep them from walking across the entrances."

HOGUE "Oh, yeah. The intent was to take the children from our crosswalk here, take them clear down here past El Robelais and then drop them back down into their neighborhood. That was the CPO's recommendation. The safety of the children is the only thing I can deal with. That is the only purpose that I have through Site Council. It is going to be developed. I would like to see the stipulation of no drive-through windows at the restaurant, which might help keep down some traffic."

GAROFALO "Could you point out to us where the school crossings are now?"

HOGUE "There is a school crossing in what I am going to call the center of the property going to the north that feeds this area. Then the Ashley Park area, which is here. There is a school crossing here and then, on the other side of Ridge, before the Christian Church."

JOHNSON "Are there any other questions? Okay. Is there anyone else to speak in opposition?"

JOE HOOVER "I am with the Wichita Public Schools 3815 North Hydraulic. I am not necessarily so much in opposition to the plan, except we are real concerned with the kids walking in that area, and also with traffic patterns, especially at the end of the day when they are leaving. We definitely are not experts in this area, but we would appreciate it if the traffic pattern there, I don't know if it needs to be an acceleration lane coming off Woodchuck onto Maple, or if that turn lane needs to be extended down there. We are not experts on that, but whatever the safest configuration is, we certainly would support that. As far as the applicant having to foot all of the bill for that, we would be willing to negotiate our fair share of that, too, I believe."

I can't totally speak for the school board for that, they obviously have the final say on that, but the staff recommendation, the staff I spoke with before I came, said we wouldn't be opposed to paying our fair share of that to make it safer for the kids, too."

OSBORNE-HOWES "I am curious, sir, when it comes time for the Subdivision Committee to be looking at the actual plat, would you, or another representative from the public school system, be willing to observe that during that process. That is something that the Subdivision members have really long hoped could happen more often. That would be good."

HOOVER "We intended to make a lot more of the meetings, too. With the cutbacks, we have lost that position. I used to try to make quite a few, and then with retirements, they had responsibilities, so we try to hit the ones that are important. Of course, Site Council really comes to us."

OSBORNE-HOWES "I understand. And because of that location, you would be a valuable member to that meeting."

HOOVER "Okay. I will make sure that I do."

JOHNSON "Are there any other questions? Okay, thank you. Is there anyone else here to speak in opposition?" Seeing none, the applicant has two minutes for rebuttal."

YEAROUT "I am not sure exactly where to go with all of this, because there are so many issues within the staff recommendation that we are not in full agreement with that we haven't even addressed because our 10 minutes were taken with dialog back and forth. I don't want to take that time. The two minutes I will take is just simply that we keep hearing about the traffic problems in the area, and they are there. We know that. They are going to get worse, we know that. We have said all along that we will guarantee the improvements in front of us, and we are willing to work our fair share with everybody else in the neighborhood in dealing with that. The best place to do that, in my opinion, is at the time the plat is presented because that is when you make the hard guarantees and the hard commitments."

The access along Maple, we are proposing from three to two because we have been in the dialog with the City that that would be a better way to manage that traffic. If we end up with a drive along the east side, along that drainage ditch, there was concern that those properties, as they develop, would orient to that drive. We are willing to stipulate in that the design with the orientation of the buildings to the center, where, in essence this is the front of the building, all moving towards the center. We are willing to work with that with the appropriate screening and in other issues along the backside architectural controls to deal with those issues. The architectural controls we have talked about with the staff are geared predominately a drivit exterior with masonry accents. Those kinds of languages.

This is a unified development. It is going to be under single control. That will be in the form of covenants with architectural controls on that, even if the pad sites are sold ultimately there will still be restrictions on the architectural compatibility. We are willing to beef that up to make sure that it is consistent, similar to what some of the other high-end user commercial areas have done. There is a recommendation to screen, along this east side, with the screening wall, that is a drainage ditch on the back side of Lowe's. There are other issues as well, I wish I had more time. Thank you."

MCKAY "Because of all of the loose ends, I am going to make a motion to defer. Will two weeks be enough time for you to work out some of this stuff? Or do you want 30 days?"

ROBERTSON (From audience) "I think two weeks is plenty. I actually think we have all of these issues worked out, we just haven't had time to get it together."

MOTION: That the item be deferred for two weeks.

MCKAY moved, **CARRAHER** seconded the motion, and it carried unanimously (8-0).

7. **Case No. A 99-5** – The City of Wichita seeks the annexation of properties located north and south of 37th Street North, between Broadway and Hillside Avenue.

KROUT "Commissioners, we have an annexation case. The only thing we would like for you to do is find that the area that is to be annexed is consistent with the Comprehensive Plan. "

MOTION: That the Metropolitan Area Planning Commission find that the unilateral annexation proposed by the City of Wichita is compatible with the adopted Comprehensive Plan, as amended in November 1996.

GAROFALO moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously 8-0.

MAN FROM THE AUDIENCE "Is there any possibility of addressing the Commission on this annexation?"

KROUT "Yes. This is not really a public hearing. The public hearing is scheduled for the City Council."

DAVID MOLLHAGEN "I live at 4341 North Cypress. I am here representing the Bel Aire Planning Commission. I am the vice-chair of that Commission. I am here to represent them in that we would appreciate the notification of any annexations and we thought we were supposed to be notified of that and any zoning changes that are within our area of influence. We didn't receive any notification of any annexations."

KROUT "It is true about and subdivision, because those are county rules, but the City doesn't operate under those county rules for annexation. I agree with you that the City, as a courtesy, should have sent a notification of the annexation request. Maybe I can talk to you after the meeting and let you know where it is going to be."

MOLLHAGEN "Okay."

9. **Other Matters**

KROUT "I just want to remind you that at noon on Thursday there will be box lunches here for you to meet with the City Council and the County Commission at noon. And on the same day from 3:00 to 5:00, we will meet on the City CIP and the County CIP. For you new members, it is not always going to be like this."

MOTION: That the Metropolitan Area Planning Department adjourn.

MCKAY moved, **GAROFALO** seconded the motion,
And it carried unanimously (8-0).

The meeting adjourned at 7:05 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 1999.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)

